UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/GEO/2000/2
26 February 2001

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT**

**SECOND PERIODIC REPORT OF STATES PARTIES DUE ON 2 AUGUST 2000**

[Original: RUSSIAN]
[9 August 2000]

# IMPLEMENTATION OF THE COVENANT ON CIVIL AND POLITICAL RIGHTS

**Second periodic report submitted by a State party pursuant to article 40 of the Covenant**

**GEORGIA***

* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

GE.01-40866 (E) 200901

CONTENTS


| | Paragraphs | Page |
|---|---|---|
| Introduction | 1 - 21 | 4 |
| Article 1 | 22 - 41 | 8 |
| Article 2 | 42 -52 | 12 |
| Article 3 | 53 - 59 | 15 |
| Article 4 | 60 - 73 | 16 |
| Article 5 | 74 - 78 | 19 |
| Article 6 | 79 - 110 | 20 |
| Article 7 | 111 - 140 | 25 |
| Article 8 | 141 - 159 | 31 |
| Article 9 | 160 - 192 | 34 |
| Article 10 | 193 - 238 | 40 |
| Article 11 | 239 - 242 | 48 |
| Article 12 | 243 - 268 | 49 |
| Article 13 | 269 - 291 | 53 |
| Article 14 | 292 - 389 | 57 |
| Article 15 | 390 - 393 | 75 |
| Article 16 | 394 - 397 | 76 |
| Article 17 | 398 - 429 | 77 |
| Article 18 | 430 - 440 | 83 |
| Article 19 | 441 - 467 | 85 |
| Article 20 | 468 - 472 | 90 |

CONTENTS (continued)


| | Paragraphs | Page |
|---|---|---|
| Article 21 | 473 - 479 | 91 |
| Article 22 | 480 - 500 | 93 |
| Article 23 | 501 - 516 | 98 |
| Article 24 | 517 - 534 | 100 |
| Article 25 | 535 - 565 | 104 |
| Article 26 | 566 - 574 | 109 |
| Article 27 | 575 - 600 | 111 |
| List of annexes | | 117 |

## Introduction

1. Georgia became a party to the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) by virtue of a decision of Parliament of 25 January 1994. The Covenant entered into force for Georgia on 3 August 1994. Pursuant to article 40, paragraph 1, of the Covenant, Georgia's initial report on measures to fulfil its obligations under the Covenant (CCPR/C/100/Add.1) was submitted in November 1995 to the Human Rights Committee, which considered it in March 1997 (see CCPR/C/SR.1564-1566 and SR.1583).

2. This report is the second periodic report and covers the period since the submission of the initial report through the first half of 2000. The report was prepared in accordance with the general guidelines adopted by the Human Rights Committee on 1 November 1999 (CCPR/C/66/GUI/Rev.1).

3. This report was prepared by the Human Rights Protection Service, which is under the supervision of the Deputy Secretary of the Georgian National Security Council. The National Security Council is a constitutional body chaired by the President. As of January 2000 the aforementioned service has been given responsibility for the preparation of all Georgia's reports on the country's implementation of international human rights instruments and the corresponding presentations to the relevant treaty bodies.

4. The factual information contained in the report has been provided by the Ministry of Health and Social Security, the Ministry of Internal Affairs, the Ministry of Defence, the Ministry of Transport and Communications, the Ministry of Environmental Protection and Ecology and the Ministry of Justice, and by the Procurator's Office, the Central Electoral Commission, the Justice Council and the Georgian Trade Unions Association. The report should be read in conjunction with the revised version of the core document.

5. During the reporting period Georgia took a number of important steps towards establishing a State governed by the rule of law and a democratic society. Virtually all of the country's legislation has been revised. It has been brought into line with the Constitution and the country's international obligations, and a legal environment conducive to extensive social, economic and political reform has been created.

In June 1997 the President of Georgia issued a decree on measures to strengthen the protection of human rights in Georgia, which was the direct result of the Human Rights Committee's consideration of Georgia's initial report on the Covenant. In the light of and pursuant to the Committee's recommendations, the decree set out a series of measures, chief among which was the establishment of an inter-agency commission to work on urgent organizational matters in the area of human rights protection under the supervision of the Deputy Secretary of the Georgian National Security Council. The relevant ministries and departments were entrusted with:

- Implementing measures to monitor and guarantee, as mandated, the rights of persons in pre-trial detention or serving custodial sentences, and providing regular progress reports;

- Informing the general public of addresses and telephone numbers that can be consulted in emergencies that threaten human rights and freedoms;

- Distribution to staff of legal defence organizations of materials on international standards for protection of the human rights of persons detained or arrested;

- Taking steps to improve the conditions of detention and medical care of detainees and convicts;

- Developing measures to enhance the effectiveness of the system of release on bail;

- Developing a programme to improve the situation of children in the most vulnerable groups;

- Giving special attention to the teaching of human rights in the educational system and in the training of the personnel of law-enforcement agencies and the security forces;

- Formulating a national family planning and reproductive health programme, supplying medical facilities and the pharmacy network with sufficient quantities of contraceptives, and determining how to popularize them with the help of the media.

The President has also asked the Supreme Court to ensure that Georgian courts make active use of international human rights norms.

It should be noted that pursuant to this decree the recommendations of the United Nations Human Rights Committee were published in the Georgian press.

The measures set out in the presidential decree have been to a large extent implemented. Information on this matter is contained in the comments made on the corresponding articles of the Covenant in this report.

6. The reform of the judiciary in Georgia called for in the context of the principle of the supremacy of law has accelerated, making the courts genuinely independent, just and impartial. Parliament has adopted the General Courts Act and the Supreme Court Act. In the specific context of court reform, a system of qualifying examinations for candidates for judgeships has been introduced. One of the exam topics is "International instruments and international treaties and agreements concluded by Georgia in the field of human rights" (General Courts Act, art. 68, para. 3). The qualifying exams called for under the reform have led to the replacement of 70 per cent of the judges in district, municipal and circuit courts, the supreme courts of the autonomous republics and the Supreme Court of Georgia.

7. The adoption by Parliament of new codes of criminal and civil procedure, which confirm that the courts are the chief avenue for addressing violations of human rights and freedoms, has been an important contribution to the legal reform of the court system. Important legislative instruments such as the codes of civil, criminal and administrative procedure were also adopted during the period covered by the report.

8. The Constitutional Court of Georgia, the body which monitors constitutionality, has been established and commenced operations. It operates within the framework of the powers conferred on it by the Constitution and the corresponding enabling legislation. Of the more than 70 suits brought before the Court, 10 have been settled in favour of the plaintiffs.

9. During the reporting period Georgia became a party (in June 1999) to another United Nations human rights instrument, the Convention on the Elimination of All Forms of Racial Discrimination. The country's initial report on its efforts to implement the Convention has been prepared and submitted to the corresponding treaty body.

10. In April 1999 Georgia was the first Transcaucasian State to become a full member of the Council of Europe. This is an indication of the European Community's recognition of the progress made by Georgia in building a State governed by the rule of law. Meanwhile, Georgia has assumed greater responsibility, specifically in the area of the recognition, observation and exercise of human rights. Georgia has undertaken to become a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which it signed when it became a member of the Council of Europe, within one year of its joining the Council. Within the framework of that Convention, it has recognized the jurisdiction of the European Court of Human Rights, and Georgia's representative to the Court has already been selected - the former President of the Supreme Court of Georgia. It will be recalled that the Convention and its Additional Protocol deal principally with civil and political rights.

11. On 11 October 1997 the Death Penalty (Abolition) Act entered into force. Under this Act, capital punishment was changed to life imprisonment. In March 1999 Georgia became a party to the Second Optional Protocol to the Covenant; this Protocol entered into force in Georgia on 22 June 1999.

12. On 21 January 2000 Georgia signed the Framework Convention for the Protection of National Minorities; it must ratify this instrument within one year of joining the Council of Europe. In order to implement the recommendations of the Council's Parliamentary Assembly, Georgia will draft and adopt a law on national minorities by the end of April 2001. The bill is being prepared by the Ministry of Justice.

13. January 2000 saw the entry into force of the Detained Persons Act, under which control of the system for the enforcement of punishments (the penitentiary system) was transferred from the Ministry of Internal Affairs to the Ministry of Justice.

14. In October 1999 regular parliamentary elections were held. The newly elected Parliament established a Committee on the Protection of Human Rights, Citizens' Petitions and the Building of Civil Society and a Committee on Civil Integration, which deals specifically with

minority issues and efforts to involve minorities more fully into the political and social life of the country; both committees are now operational. In accordance with the Constitution (art. 56, para. 1), the mandate of parliamentary committees includes the preparation of draft legislation, assistance in carrying out decisions and the monitoring of the activities of the Government and other bodies accountable to Parliament.

15. Within the executive branch, the Office of the Deputy Secretary of the National Security Council for the Protection of Human Rights, which was created on the initiative of the President of Georgia, has been in operation since April 1997. In addition to its executive and coordinating functions, the Office also has some degree of monitoring authority. In collaboration with the President's administrative staff and the relevant ministries and departments, the Deputy Secretary's Office makes a definite contribution to the practical implementation of constitutional guarantees of human rights and freedoms in Georgia.

16. In April 1997 the post of Special Assistant to the President for Ethnic Affairs was established. The Assistant and his or her staff are responsible, inter alia, for working with national minority associations and, in general, the various diasporas living in Georgia with a view to initiating and fostering contacts with Georgians living outside the country. One of the Assistant's basic tasks is to foster a civic spirit among minorities and to tap their potential as fully fledged citizens of Georgia more fully. With this in mind, a council - or so-called "satatbiro" - of representatives of national communities and social groups, has been established within the Department for Inter-Ethnic Relations. The council brings together some 60 minority non-governmental organizations.

17. Together with the State Committee for the Protection of Human Rights and Ethnic Relations, which was mentioned in the initial report, a basically new institution for Georgia, that of the People's Advocate, or Ombudsman, has been established. The Ombudsman Act, which was drafted with the help of international experts, gives the Ombudsman broad powers for identifying and investigating violations of human rights by State bodies. All Georgian citizens as well as foreigners, stateless persons and non-governmental organizations may have recourse to the Ombudsman. Twice a year the Ombudsman reports to Parliament on the situation with regard to the observation of human rights and freedoms in Georgia; the report is issued as an official document of Parliament.

18. In November 1998 the first-ever elections to local self-government bodies were held in Georgia. In many cases the representative bodies which were formed at the district level as a result of these elections created human rights commissions, which are now operational.

19. The "third sector" has become quite active in Georgia. The number of non-governmental organizations of all types, including human rights organizations, is growing. In the context of the Covenant, it should be noted that most non-governmental organizations are active precisely in the area of civil and political rights.

20. A critical question is the place that the Covenant is to occupy in Georgia's legal system. Since the time the initial report was submitted, a simple solution to this problem has been found.

21. Under article 6 of the Constitution, international treaties and agreements to which Georgia is party and which do not contradict the Constitution shall prevail over domestic legislation. Under the Legislative Instruments Act, Georgia's international treaties are considered to be normative acts, which means that the provisions of international treaties concluded by Georgia are applied on a par with those of domestic legislation. In the Georgian legal system, international treaties concluded by the country rank second, after the Constitution. Moreover, under the International Treaties Act, once Georgia has signed (ratified) an international treaty it becomes an integral part of domestic law. International treaties that establish specific rights and obligations do not need to be elaborated through the adoption of domestic legislative instruments, but have immediate effect in Georgia. Thus it is entirely permissible to apply and cite the Covenant directly in court.

**Article 1**

22. In accordance with the purposes and principles of the Charter of the United Nations, article 1 of the Covenant stipulates that all peoples have the right of self-determination. The right of self-determination is particularly significant in that its exercise implies the existence of conditions for ensuring the effective guarantees of the observance as well as the development and strengthening of individual rights. It is precisely for this reason that the right of self-determination is enshrined in the norms of positive law, both in this Covenant and in the Covenant on Economic, Social and Cultural Rights.

*Right to self-determination*

23. The Georgian Constitution which was adopted on 24 August 1995 states that Georgia is an independent, united and indivisible State whose form of political organization is a democratic republic (art. 1). The country's territorial integrity and the inviolability of State borders are confirmed by the country's Constitution and legislation, and are recognized by the international community and international organizations (art. 2). The Constitution specifically states that Georgia's State-territorial structure shall be determined by constitutional law on the basis of the principle of the delimitation of powers after full restoration of the Georgian State's jurisdiction over the entire national territory (art. 2, para. 3). The presence of this provision in the Constitution is necessitated by the continuing de facto violations of the country's territorial integrity. Since the time the country's initial report was presented it has not been possible, notwithstanding some progress, to find a political solution to the conflict around Abkhazia and the Tskhinvali region (the former South Ossetian Autonomous Republic).

24. Under the Constitution, questions of local importance to Georgian citizens are settled through local self-government without undermining the sovereignty of the State. The procedures relating to the establishment and powers of local self-government bodies and their relationship to State bodies are set out in the enabling legislation (art. 2, para. 4). The local Self-Government and Administration (Establishment) Act was adopted in October 1997, and until the adoption of the constitutional law on the State-territorial structure of Georgia it constituted the basis for the establishment and functioning of executive and representative bodies at the local level. Pursuant to article 49 of the Act, it entered into force as soon as the results of the elections to local self-government and administration bodies were officially published. As is noted in the introduction to this report, these elections were held in November 1998.

25. According to the Constitution, once the necessary conditions have been established throughout Georgia's national territory and local self-government bodies have been set up, a bicameral Parliament is to be established, consisting of the Council of the Republic and the Senate. The Council of the Republic is composed of deputies who are elected on the basis of a proportional system. The Senate is composed of members from Abkhazia, the Ajar Autonomous Republic and other territorial entities within the country as well as five senators appointed by the President of the country (art. 4). Today the country's highest legislative body is the unicameral Parliament, elected through a special system on the basis of universal, equal and direct suffrage and by secret ballot (art. 49, para. 1). Clearly, the entry into force of article 4 is impeded by the lack of a settlement of the previously mentioned conflicts.

26. It should be noted in the context of this paragraph of article 1 that, following lengthy debates in March 2000, Parliament constitutionally defined the status of one of Georgia's territorial units, Ajara, as an autonomous republic within the Georgian State, and the corresponding amendments were made to the Georgian Constitution (arts. 4, 55, 67 and 89).

27. The most difficult and painful problem Georgia faces in nation-building continues to be the failure to restore the country's territorial integrity. This problem in turn has given rise to a whole series of negative consequences which influence the political, economic, social and other aspects of national life. In their separatist aspirations, the leaders of the self-proclaimed "republics" of Abkhazia and South Ossetia invoke the right of self-determination, yet it is obvious that such claims are totally unfounded.

28. Contemporary international law as it applies to the right of peoples to self-determination is quite categorical: while recognizing the right to self-determination as applying both to existing States and to numerically small peoples that form an integral part of the population of such States, it nevertheless repudiates the right of such peoples living in democratic States to secede unilaterally, without taking the will of the *whole* State into account. The 1970 United Nations Declaration on Principles of International Law, the World Conference on Human Rights, held in Vienna in 1993, and the basic documents of the Organization for Security and Cooperation in Europe (OSCE), all of which unanimously recognize the right of self-determination and even secession only in respect of peoples living under colonialism and dependent peoples, nevertheless stress that the exercise of this right must not use as a means of settlement or incentive any actions that violate or undermine the territorial integrity or political unity of sovereign independent States which observe the principles of equality and self-determination of peoples and have Governments that represent the interests of all peoples in their territory without distinction.

29. Throughout Georgia's conflicts the international community has consistently supported and continues to support the principle of the country's territorial integrity and sovereignty. In the case of Abkhazia, this support has been expressed in all resolutions of the United Nations Security Council since 1993. Indeed, in this context one must look closely at the wording used with regard to the need to determine "the political status of Abkhazia within the State of Georgia" (Security Council resolution 1065 (1996) of 12 July 1996). Commitment to the

permanence of Georgia's sovereignty and territorial integrity is unequivocally reflected in the documents of the Budapest, Lisbon and Istanbul summits of OSCE (held in 1995, 1997 and 1999 respectively) and of the summit meetings of the Commonwealth of Independent States. The United Nations Security Council has called the efforts to legitimize the separatist regime in Abkhazia through the holding of self-styled elections and referendums on the status of the region illegitimate and unacceptable (resolution 1287 (2000) of 31 January 2000). Given that the majority of the population of Abkhazia has been exiled from their homes as a result of the ethnic cleansing and brutality perpetrated by the separatists, this appraisal accurately reflects the position of the international community.

30. A settlement of the conflict around Abkhazia can thus be obtained by determining the region's political status as part of a united Georgia and by repatriating the hundreds of thousands of displaced persons. Efforts to this end are being made by the Georgian side and the international community. In addition to United Nations structures, the group of Friends of the Secretary-General on Georgia as well as Ukraine and other countries of the southern Caucasian region are participating in the consultation process. The Russian Federation, too, has an important positive role to play in the settlement of the conflict. As regards the status of the region, Georgia has proposed and continues to propose that Abkhazia should move up to a higher level - from an autonomous region to a constituent member of a federation distinguished from other such constituent entities by virtue of its elevated status - but maintains that this should be achieved by a constitutional settlement, rather than through an international treaty. This position on the part of the country's political leaders is shared by the international community. Unfortunately, the position taken by the Abkhaz side, which is prepared to "discuss only one question, that of possible relations between two equal and sovereign States, Abkhazia and Georgia" (letter dated 14 February 2000 from the leader of Abkhazia, Mr. V. Ardzinba, addressed to the Secretary-General), does nothing to promote a settlement of the conflict. The prospects of the repatriation to Abkhazia of displaced persons, most of whom are Georgian, also seems very unlikely, at least in the foreseeable future. This is due to the separatists' setting of preconditions, consideration of which lies outside the scope of this report, but also to the absence of guarantees of security for the returnees.

31. Emphasis is being placed on problems relating to the settlement of the conflict around Abkhazia because that situation is more complex than the conflict in Tskhinvali region. During the time elapsed since the initial report, talks between the Georgian and Ossetian sides aimed at settling that conflict have been more or less regular. Among the international organizations involved in this process, OSCE has played an active role, although the United Nations Development Programme (UNDP) has played a significant role in terms of cooperation for the economic rehabilitation of the region. And the fact that commercial and economic ties between Tskhinvali region and the rest of Georgia have been maintained and that the region is less isolated is of considerable significance. In the assessment of Georgia's political leadership, relations between Georgia and Ossetia (specifically, the former South Ossetia) have entered the post-conflict phase. The groundwork for this has been laid by people-to-people diplomacy, the most important factor in settling the conflict, which has been quite successful. Clearly, this type of conflict resolution cannot be achieved without the good will of the population.

32. The priority Georgia attaches to the prompt settlement of internal conflicts through exclusively peaceful means is evidenced by the decision by the President of Georgia to appoint a special post of Minister for Special Assignments. The principal duties of this post are to handle conflict-resolution issues, and to this end the Minister must have sufficiently broad powers.

*Right to natural resources and the means of subsistence*

33. Article 31 of the Constitution stipulates that the State is responsible for the equitable social and economic development of the country. Benefits are established by law to ensure social and economic progress in mountain regions.

34. The Constitution recognizes and guarantees the right to own and inherit property, and prohibits any abrogation of the universal right to acquire, transfer or inherit property. Confiscation of property for essential public needs is permissible only in cases directly provided for by law, by a court decision or when a pressing need arises, as set out in the relevant enabling legislation, and only when proper compensation is made (art. 21). The State is required to promote the development of free enterprise and competition, monopolies are prohibited and the rights of consumers are protected by law (art. 30).

35. Georgia today faces a number of serious economic problems. The social life of the people is not regulated; particularly acute is the problem of employment, low wage levels and inadequate development of industrial labour. One of Georgia's key development tasks is overcoming poverty. Combating poverty means more than just providing for people's physical existence; no less important is the creation of favourable conditions for the social integration of each individual and his or her full involvement in society.

36. Georgia's economic development strategy is aimed at building a modern, socially-oriented market economy based on the following principles: support for market mechanisms and activation of the potential of all sectors; limiting State involvement to a necessary minimum so as to enhance the effectiveness of market mechanisms; provision by the State of rules for the functioning of the market economy and ensuring social justice; and State assistance to the private sector in achieving international competitiveness.

37. Within a short time, Georgia has experienced sweeping privatization and cut back government subsidies to unprofitable enterprises; it has also liberalized prices and foreign trade and reformed its financial system. Such radical changes have given rise to acute social problems, and in this connection Georgia's experience has been the most painful of the countries with economies in transition. Yet it can also be said that Georgia has gone further than most of the countries of the former Soviet Union in building a fully fledged market economy. The country's foremost economic task continues to be achieving macroeconomic stability. The financial crisis which started in the Russian Federation in 1998 has also affected Georgia, making the economic situation shaky. National fiscal and monetary policies have been aimed at overcoming the effects of the crisis. The Government has succeeded in stabilizing the exchange rate of the national currency, the lari, although at a rate lower than pre-crisis levels, and inflation has been curbed.

38. Currently, macroeconomic stability in Georgia is threatened by the acute budgetary crisis which is due chiefly to the extremely low level of government revenues. In addition, there is a persistent need for effective control of the budgeting process and rationalization of State expenditure to promote a balancing of the State budget. Improving the customs and tax services will obviously contribute to the rapid growth of the income section of the budget.

39. The period since the initial report was submitted has been highly productive insofar as the development of Georgia's international economic ties is concerned. The most significant factors in this regard have been the following:

- Georgia became a full member of the World Trade Organization (WTO) in 1999;
- From 1996 to 1999 Georgia was one of the leading European countries in the Transport Corridor - Europe-Caucasus-Asia (TRACECA) and the Interstate Oil and Gas Transmission to Europe (INOGATE) projects, which were carried out under the auspices of the European Union;
- Agreement was reached on the main questions of principle relating to the Baku-Tbilisi-Ceyhan pipeline, the main conduit for exporting oil from the Caspian region.

Georgia's integration in the world economic system has been strengthened, as has its cooperation with the international financial system (the International Monetary Fund (IMF) and the World Bank). Assistance from the United Nations has helped to create an environment conducive to investment, and this has definitely fostered the country's economic growth.

*Respect for the right to self-determination*

40. Georgia's approach to the right of peoples to self-determination as construed in contemporary international law is one of unconditional respect. This right is properly considered to be the freedom of self-expression through traditions, culture, language and even political institutions, but within the boundaries of a State which respects this right and human rights and freedoms as a whole. Issues pertaining to the exercise of minority rights in Georgia are discussed in the section of this report on article 27 of the Covenant.

41. In the context of this article of the Covenant, reference is made to the section of Georgia's initial report on the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.37) dealing with article 1 of that instrument (paras. 25-46).

**Article 2**

*Respect for and exercise of the rights of all persons subject to the jurisdiction of a State*

42. Article 14 of the Constitution states that all people are born free and equal in the eyes of the law irrespective of their race, colour, language, sex, religion, political and other beliefs, national, ethnic and social affiliation, origin, property and class status or place of residence.

43. Under the Constitution, citizens of Georgia enjoy equal rights in the social, economic, cultural and political life of the country, regardless of language or national, ethnic or religious affiliation. In keeping with the generally recognized principles and norms of international law, they are free under the law to develop their own culture and to use their native language both in private and in public, without discrimination or interference of any kind (art. 38, para. 1).

44. According to article 85, paragraph 2, of the Constitution, in areas where the population does not speak the country's State language, the State provides teaching in that language and explanations of matters pertaining to legal proceedings. The inclusion of this provision in the Constitution can be seen as a legacy of the Soviet period, when minorities living in Georgia had no motivation to become fluent in Georgian and Russian was the lingua franca.

45. The Constitution provides for observance of the principle of non-discrimination in respect of non-citizens as well, stating that aliens and stateless persons living in Georgia have the same rights and obligations as Georgian citizens except where otherwise stipulated by the Constitution and the law (art. 47, para. 1). One such exception provided for in the Constitution is the authority of the State to place restrictions on the political activity of aliens and stateless persons (art. 27).

46. The human rights and freedoms set out in chapter II of the Constitution can be provisionally divided into two groups: those applicable to all persons and those applicable to citizens. Insofar as the Covenant is concerned, the Constitution guarantees all persons the following rights:

- Right to life (art. 15);
- Prohibition of torture (art. 17, para. 2);
- Freedom of labour (art. 30, para. 1);
- Right to freedom and inviolability of the person (art. 18);
- Freedom of movement and freedom to change place of residence (art. 22);
- Right to a fair trial (arts. 40, 42 and 85);
- Prohibition of retroactive application of laws (art. 42, para. 5);
- Inviolability of personal and family life (art. 20);
- Freedom of thought, conscience and religion (arts. 9 and 19);
- Freedom of opinion and information (arts. 19 and 24);
- Freedom of peaceful assembly (art. 25);

- Freedom of association (art. 26); [*Note*: Citizenship is considered to be a prerequisite for the establishment of political parties and membership therein]

- Right to marry and create a family (art. 36, para. 1);

- Citizenship rights of children (art. 12, para. 1);

- Prohibition of discrimination before the law (art. 14);

- Minority rights (art. 34, para. 1, and art. 38, para. 12).

The following rights are extended only to citizens:

- Right to free elections and access to government service (arts. 28 and 29);

- Prohibition of expulsion from the country (art. 13, para. 3);

- Right to freedom of information with specific reference to access to information maintained by State bodies (art. 41).

47. Detailed information on the prohibition of discrimination in Georgian legislation is contained in the section of this report dealing with article 26 of the Covenant.

*Legal remedies*

48. Under the Constitution all persons are entitled to have their rights and freedoms defended in the courts. The State guarantees to pay full compensation, through the courts, to any person who is wrongfully injured by the State, self-governing bodies or their officials (art. 42, paras. 1 and 9).

49. Among the legal remedies available in Georgia for redressing violations of any person's rights and freedoms, priority is given to the courts; this does not, however, preclude the use of any other legal remedies provided for by law.

50. In the context of this paragraph of article 2 the reader is referred to Georgia's initial report on implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD/C/369/Add.1), which was submitted to the corresponding United Nations treaty body in May 2000. The section of that report dealing with article 6 of the Convention contains fairly detailed information on the structure and procedures of the judicial system (paras. 283-290); judicial procedure in respect of constitutional supervision (paras. 291 and 292); administrative court proceedings (paras. 293-295); civil proceedings (paras. 296 and 297); criminal proceedings (paras. 298-302); and the related right to institute proceedings in other forums with respect to violations of rights and freedoms (paras. 303 and 304). In addition, all persons have the right to file an appeal concerning any infringement of their rights and freedoms with the corresponding legislative and executive authorities referred to in the introduction to this report.

51. As noted in the introduction, Georgia's judges are well versed in the human rights and freedoms set out in the Covenant and other instruments to which Georgia is party. As for education in other kinds of government service, it should be noted that, since its creation in October 1997, the office of the Ombudsman has begun to conduct regular seminars and training activities on the subject of human rights protection in which both local and international experts have participated. Some of the seminars conducted in 1999 were of the "train-the-trainers" variety, and participants - persons working in district police and procurator's offices - subsequently conducted special human rights activities for their own colleagues in the workplace.

52. As regards the role of the media in increasing the population's awareness of human rights and freedoms, reference is made to Georgia's initial report to the Committee on the Elimination of Racial Discrimination (CERD/C/369/Add.1, paras. 321 and 322).

**Article 3**

53. As noted above, article 14 of the Constitution sets out the freedom and equality of all persons before the law irrespective, inter alia, of sex. Where women are concerned, another noteworthy constitutional provision provides for legal protection of maternity rights (art. 36, para. 3).

54. Given the importance currently attached to the achievement of gender equality, it might be appropriate to reproduce the wording of article 3 of the Covenant directly in the Constitution. This would be consistent with both the spirit and the letter of Georgian legislation and Georgia's international human rights obligations.

55. On 22 September 1994 Georgia became a party to the Convention on the Elimination of All Forms of Discrimination against Women. The country thus became obligated to observe the Convention's provisions and to submit periodic reports to the corresponding United Nations treaty body. In 1998 Georgia submitted its initial report to the Committee on the Elimination of Discrimination against Women. The report was considered by the Committee in June 1999 at its twenty-first session. Along with a positive assessment of the steps taken by Georgia to implement the Convention, the Committee put forward a series of recommendations on issues that had elicited its concern. On the basis of these recommendations the State Commission for the Formulation of Policies to Advance Women, which was established in February 1998, prepared a draft presidential decree on measures to enhance the protection of women's rights in Georgia. The bill was considered at a meeting of the Georgian Parliament and signed by the President. Under the decree, the Commission is entrusted with the ongoing monitoring of the National Plan of Action for the Advancement of Women, adopted in June 1998 by means of a presidential directive, and the elaboration of a national programme to combat violence against women, including domestic violence. The programme was drawn up, and in February 2000 the President of Georgia issued a decree ratifying the plan to combat violence against women for the period 2000-2002.

56. Since 1997 a joint project undertaken by the Georgian Government and UNDP has been under way. During the first phase (1998-1999), emphasis was placed chiefly on overcoming stereotyped approaches to gender problems, familiarizing society with the essence of these

problems, and ensuring more active involvement of women in the social, economic and political life of the country. Project execution has led to increased public interest in women's problems through the establishment of the State Commission for the Formulation of Policies to Advance Women and its activities to implement the National Plan of Action. Despite financial difficulties, the budget for 2000 provides for State cost-sharing in the programme in the amount of 60,000 lari, reflecting the State's interest in gender issues.

57. Fundamental problems associated with the exercise of women's rights in Georgia are:

- Inadequate representation in decision-making in legislative and executive bodies at the central and local levels (the situation is different in the justice system, where roughly half of all judges are women);

- Increased poverty during the transition period, particularly among persons living on fixed incomes (persons with government salaries and retirees), specifically as a result of the critical financial and budgetary situation and months of arrears in the payment of wages and pensions by the State;

- Higher levels of unemployment for women as compared with men; in addition, it is virtually impossible for specialists with higher education to find work (the labour market favours jobs in the service and commercial sectors, which do not require highly skilled workers);

- Effects of internal conflicts, which have turned thousands of women into displaced persons;

- Lack of awareness of their rights and freedoms and methods of protecting them, as well as legal illiteracy in general (this is true of men as well).

58. Detailed information about provisions to combat discrimination, including gender discrimination, in Georgian legislation, their practical implementation, the activities of women's organizations, problems of gender equality, and the advancement of women as a whole is contained in Georgia's initial report to the Committee on the Elimination of Discrimination against Women (CEDAW/C/GEO/1 and Add.1 and Corr.1).

59. It should be noted that since the aforementioned documents were presented there has been no change in the status of women. There have been only insignificant changes in a few indicators, and these have not influenced general trends, which have been discussed earlier in this section.

**Article 4**

60. Under article 46 of the Constitution, during a state of emergency or martial law the President is authorized to restrict various constitutional rights and freedoms in the country or in any part thereof, and must submit his decision to do so for Parliament to ratify within 48 hours.

61. Pursuant to article 46, the following rights and freedoms may be restricted in the event of a state of emergency or martial law:

- Inviolability of freedom of the person (art. 18);
- Inviolability of private life (art. 20);
- Inviolability of property (art. 21);
- Freedom of movement (art. 22);
- Freedom of information (arts. 24 and 41);
- Freedom of peaceful assembly (art. 25);
- Freedom of labour (art. 30);
- Right to strike (art. 33).

62. In addition, article 46, paragraph 2, indirectly restricts the right to free elections, stating that elections of any kind may be held only after the state of emergency or martial law has been lifted. It should also be noted that declaration of a state of emergency or martial law entails the suspension of any revision of the Constitution until the said state is lifted (Constitution, art. 103).

63. The Constitution does not reserve the prerogative of introducing a state of emergency or martial law to any one power, but stipulates that a decision of the President - the head of State and the executive power - must be approved by the highest legislative body in the country. In essence, this approach precludes the possibility of any unfounded or arbitrary decisions being taken.

64. Under article 4 of the Covenant, no restriction of the right to life (art. 6), the right to freedom from torture (art. 7), freedom from slavery and servitude (art. 8, paras. 1 and 2), freedom from imprisonment for inability to fulfil contractual obligations (art. 11), freedom from retroactive application of laws (art. 15), the right to recognition as a person before the law (art. 16) and the right to freedom of thought, conscience and religion (art. 18) is permissible under a state of emergency. A comparison of the restrictive provisions of the Constitution and the requirements of the Covenant reveals no contradiction between the two. The restriction of the freedom of labour provided for in the Constitution is consistent with article 8, paragraph 3 (c) (iii), of the Covenant.

65. The Constitution does not require the State to inform any international organization or other State of the imposition or lifting of a state of emergency. This procedure is provided for in the relevant Georgian legislation, which will be discussed later.

66. Questions relating to the declaration and implementation of a state of emergency or martial law are also governed by several articles of the Constitution. These include article 61, which states that Parliament shall meet by its own right within 48 hours of the declaration of a

state of emergency or martial law by the President. Decisions of Parliament relating to states of emergency and martial law and the restriction of constitutional rights and freedoms shall be taken by a majority of votes of the plenary Parliament (art. 62). Article 73, subparagraph (h), of the Constitution, which is extremely important, sets out the requisite conditions for imposing a state of emergency: war or civil unrest, infringement of the country's territorial integrity, a military revolution or armed uprising, environmental disasters or epidemics, or other events in which the State authorities are unable to exercise their constitutional powers normally. This subparagraph states that during a state of emergency the President shall issue decrees having the force of law which shall remain in force throughout the state of emergency. Such decrees shall also be submitted to Parliament, and emergency powers shall be extended only to that territory in which the state of emergency has been declared. Martial law shall be declared by the President in the event of an armed attack against Georgia (art. 73, subparagraph (g)).

67. Questions relating to emergencies are governed by the State of Emergency Act and the Martial Law Act, adopted in October 1997. The wording of both laws and even their structure (down to the numbering of the articles) are virtually identical, making it possible to review both at the same time and while discerning their differences.

68. Both laws reiterate the provisions of the Constitution relating to the procedure for imposing a state of emergency or martial law and reproduce the list of rights and freedoms that may be restricted. Both stipulate that presidential decrees restricting rights must be ratified by Parliament (art. 2).

69. According to article 3 of both laws, presidential decrees imposing a state of emergency or martial law must set out the reasons for such a decision, the proposed duration and, in the case of a state of emergency, the extent of the territory in which it is to be applied. Martial law, unlike a state of emergency, is declared throughout the entire country (Martial Law Act, art. 2, para. 1). Extension of the duration or the early lifting of a state of emergency or martial law requires the approval of Parliament. As soon as a state of emergency or martial law is lifted all decrees issued by the President during that period cease to be in force.

70. During a state of emergency or martial law, the highest executive authorities have the power to carry out, in accordance with legislative requirements, a series of measures which may restrict human rights and freedoms, namely:

- Introduction, in places where states of emergency or martial law are in force, of special regimes for the entry and exit of citizens and restriction of the freedom of movement (art. 4, subparagraphs (c) and (d));

- Banning of any assemblies, rallies, marches, demonstrations or other mass events throughout the territory where the state of emergency is in force, or during the imposition of martial law (art. 4, subparagraphs (f));

- Monitoring, in accordance with the law, of the media (art. 4, subparagraphs (m));

- Temporary ban on the release from work of workers and employees of State enterprises, establishments and organizations of strategic or vital significance who so request, and the recruitment of able-bodied citizens to work in enterprises, organizations and establishments (art. 4, subparagraphs (g) and (j));

- Ban on strikes (art. 4, subparagraphs (i));

- In order to avert and eliminate the consequences of a state of emergency or martial law, the use, with appropriate compensation, of property and material resources belonging to individuals and legal entities (art. 4, subparagraphs (h));

- Checking of documents in places where citizens gather and, when appropriate, the conduct of body searches (art. 4, subparagraphs (r));

- Detention of curfew violators until the curfew is ended or, in the absence of personal identification papers, until identity is established, but no longer than 72 hours (art. 7).

71. The State of Emergency Act and the Martial Law Act stipulate that the Ministry of Foreign Affairs shall immediately inform the Secretary-General of the United Nations when a state of emergency or martial law is declared or lifted. Georgia has also assumed the obligations vis-à-vis the Secretary-General of the Council of Europe incumbent on it as a full member of the Council and a party to the European Convention on Human Rights.

72. In the context of this article of the Covenant, it should be noted out that both of the acts mentioned above stipulate that Parliament's rejection of a decision by the President concerning the imposition of a state of emergency or martial law shall result in the immediate lifting of the state of emergency or martial law (art. 2, para. 2).

73. No instances in which a state of emergency or martial law was declared have occurred since the time Georgia's initial report was submitted.

**Article 5**

74. The Constitution stipulates that Georgian legislation shall be consistent with the generally accepted principles and norms of international law. International treaties and agreements to which Georgia is a party that do not contradict the Constitution shall prevail over domestic legislation (art. 6, para. 2).

75. In the light of article 5 of the Covenant, special significance is attached to article 7 of the Constitution, which states that: Georgia recognizes and observes the generally recognized human rights and freedoms as inalienable and supreme human values and that the exercise of power by the people and the State is restricted by these rights and freedoms as it is by the law in force.

76. Chapter II of the Constitution is devoted almost entirely to guarantees of human rights and freedoms. Some 34 articles in this chapter cover the entire gamut of human rights - civil

and political, economic, social and cultural. In addition, under article 39, the fundamental law of the country does not reject other universally recognized rights, freedoms and guarantees of the person which are not specified in it, but arise from the principles of the Constitution.

77. Mention was made in the introduction to this report of the place that Georgia's international treaties and agreements, including the Covenant, occupy in the country's legal system and the mechanisms that exist for their practical implementation. Georgia considers that this situation adequately ensures the effective implementation of article 5.

78. As a full member of the Council of Europe, Georgia, in the context of the European Convention on Human Rights (which is generally understood as embracing chiefly civil and political rights), has accepted the compulsory jurisdiction of the European Court of Human Rights without reservation. Alongside the monitoring mechanisms of the United Nations system, this affords yet another guarantee for persons under the jurisdiction of the Georgian State that their rights and freedoms will be protected.

**Article 6**

79. As stated in article 15 of the Constitution:

"1. Life is an inviolable human right and it is protected by law.

"2. Until such time as it is fully repealed, the death penalty, as an exceptional form of punishment, may be imposed under constitutional law for the commission of particularly heinous crimes against life ...".

80. Paragraph 2 of the above article has become something of an anachronism, since the Georgian Act abolishing the death penalty as the extreme punishment has put an end to the practice of the "lawful taking of life" in present-day Georgia. The Act was promulgated and entered into force on 11 October 1997. The death penalty was last carried out in Georgia in February 1995. The current Criminal Code provides life imprisonment as the most severe punishment (art. 40, para. (k)); for minors up to the age of 16 the most severe punishment is deprivation of liberty for a period of up to 10 years, and for minors aged 16-18 the most severe punishment for the commission of particularly serious crimes is deprivation of liberty for periods between 10 and 15 years (art. 88, paras. 1 and 2).

81. On 22 March 1999 Georgia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Protocol entered into force for Georgia on 22 June 1999.

*Mitigation of the threat of war and of associated crimes against life*

82. Georgia's military policy rests firmly on the principles of a democratic, benign and peace-loving State, which is committed to the prevention of war and protection of the country from possible aggression. The military policy incorporates, in particular, the norms and

principles of international relations recognized by our country, support for the combined efforts of the international community to prevent wars and armed conflicts, and a renunciation of the production, deployment and transfer of nuclear arms in the territory of Georgia.

83. The Criminal Code of Georgia categorizes as criminal offences the preparation or conduct of a war of aggression (art. 404); incitement to wage a war of aggression (art. 405); the production, acquisition or sale of weapons of mass destruction (art. 406); genocide (art. 407); and crimes against humanity (art. 408).

84. Articles 411-413 of the Criminal Code also prescribe extremely severe penalties for violations of the rules of international humanitarian law.

85. Under the criminal code, the preparation of nuclear weapons or other nuclear explosive devices is a criminal offence (art. 232).

86. Georgia abides by the policy of peaceful coexistence with all countries in the world and firmly supports the principle of resolving all conflicts, whether domestic or inter-State, by exclusively peaceful, political means.

*Measures to safeguard the inalienable right to life*

87. As noted in the commentary on article 1, paragraph 2, of the Covenant, one of the key problems facing the Georgian State in the immediate future is overcoming poverty. The same section of the report enumerates both the reasons for the country's serious economic and social situation and suggested remedies. With reference to article 6 of the Covenant, we should also note that in January 2000 the Georgian Government adopted a document entitled "Blueprint for Social Development", which lays the foundations for a new, long-term programme for the transformation of Georgian society.

88. The programme has the following strategic goals:

- Major improvement in the living conditions and material status of the population;
- Effective job placement and job creation measures and improvements in the quality and competitiveness of the workforce;
- Measures to uphold constitutional guarantees in the domains of employment, social welfare, education, health care and culture;
- Shift of emphasis in social policy to the family and measures to give effect to the rights and social guarantees of the family, women, children and young people;
- Improvement in the demographic situation and upgrading of social infrastructure.

89. With regard to measures to protect the health and life of children, the following more extensive information is provided.

90. State medical programmes in obstetrics and paediatric care have been developed and set in operation in Georgia, and these are run on an insurance basis. A special commission has been set up within the Ministry of Health and Social Security to explore effective ways of tackling mother and child mortality.

91. By order of the Minister of Health and Social Security a referral system has been set in operation in Tbilisi and adjacent districts for pregnant, parturient and post-partum women and their newly born, aimed at reducing the number of birth-related complications, providing medical treatment for women in pregnancy, parturition and post-partum with health risks and reducing the probability of the birth of infirm and premature children, as well as providing treatment for such children.

92. In January 1997, the Georgian President issued a decree setting up a managed system for the feeding of newborn infants. A national breastfeeding committee was set up and, over the reporting period, this committee has conducted a number of training courses for health workers on such issues as breastfeeding, the child-friendly hospital initiative, and the International Code of Marketing of Breastmilk Substitutes. Together with the United Nations Children's Fund (UNICEF) and the non-governmental organization Caritas, the Ministry of Health has conducted a number of measures relating to this issue. In particular, a procedure has been set up in eight regions of the country to monitor implementation of the International Code of Marketing of Breastmilk Substitutes. The report on the outcome of this exercise was recognized as one of the best and submitted to the World Health Assembly.

93. In September 1999, the Georgian Parliament adopted an act on protecting and promoting the natural feeding of children and on the use of artificial foods, based on the principles of the International Code of Marketing of Breastmilk Substitutes. In addition, a national standard has been elaborated and approved for formula 1 infant food.

94. State medical programmes on safe motherhood and child survival have been in operation since 1995. These have as their purpose the observation of pregnant women, the prevention of pregnancy complications, measures to ensure safe deliveries, and also, where necessary, the provision of medical assistance.

95. New arrangements introduced in 1999 for the management and funding of the health-care system have necessitated the formulation of a uniform State health insurance programme for children, which incorporates the following subprogrammes:

- State medical assistance programme for children up to the age of three;
- State programme for the management of cases of acute morbidity in children up to the age of three in Tbilisi;
- State assistance programme for children's heart surgery;

- State medical assistance programme for very young children deprived of parental care;

- State medical assistance programme for children deprived of parental care and for children requiring constant medical treatment.

The programme, in which 255 medical establishments are involved, runs on a budget of 10.6 million lari.

96. The Ministry of Health and Social Security has approved and started implementing the World Health Organization (WHO) Integrated Management of Childhood Illness (IMCI) initiative and, in that context, in December 1999 work was launched with UNICEF assistance on drafting an appropriate adapted national programme. A working group has been set up to prepare the adaptation plan and the programme for the conduct of IMCI training courses.

97. As a Member State of the United Nations, Georgia has submitted initial reports to the relevant treaty bodies on its implementation of the Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.37), the Convention on the Rights of the Child (CRC/C/41/Add.4 Rev.1), and the Convention on the Elimination of All Forms of Discrimination against Women. These reports were reviewed by the treaty bodies in April and May 2000 and June 1999, respectively. With reference to this section of the present report, the information contained in the initial reports, together with Georgia's responses to additional questions raised by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, provide a comprehensive picture of the observance of the right to life.

*Protection against the arbitrary deprivation of life*

98. The Criminal Code contains a section on crimes against the person, which includes chapters on crimes against life (arts. 108-116), and threats against the life and health of the person (arts.127-136). The Code classifies as criminal offences acts of violence against individuals and prescribes appropriate penalties for such offences. Homicide, either premeditated or committed in aggravating circumstances, is ranked as one of the most serious crimes. Custodial sentences of various lengths are prescribed for such crimes as premeditated murder committed in a state of sudden extreme mental agitation, premeditated murder by a mother of her newly born child, the causing of death through negligence, and driving a person to suicide.

99. Even if there is outward evidence of a crime against the individual, under article 28 of the Criminal Code, actions performed in necessary defence are not deemed to be unlawful. At the same time, homicide caused by actions which exceed the limits of necessary defence is punishable under law as a criminal offence (art. 114 of the Criminal Code).

100. Under article 29, paragraph 1 of the Criminal Code, actions undertaken to apprehend a criminal and involving no measures excessive for that purpose, with a view to handing such a criminal over to the authorities, are not deemed to be unlawful. At the same time, article 114 of the Code categorizes as a criminal offence homicide caused as a result of excessive measures to detain a criminal.

101. In the Georgian legal system homicide is not permitted, even at the victim's wish. Under article 110 of the Criminal Code, euthanasia (defined as the taking of a victim's life at his or her insistent request and in accordance with his or her will, performed with a view to releasing a dying person from severe physical pain) is treated on a par with murder and is punishable by deprivation of liberty for a term of up to three years.

102. According to the principles of Georgian law, human life is considered to begin at the moment in the birth process when the child separates from the mother's womb. Accordingly, homicide can only be said to occur from the moment when the foetus is at least partially separated from the mother's womb, even if it is not yet breathing. For that reason, the law does not criminalize the artificial termination of pregnancy, provided the necessary legal conditions have been observed. At the same time, the Criminal Code establishes fairly severe penalties, including the deprivation of liberty, for the performance of illicit abortions. In May 2000, the Georgian Parliament adopted the Abortions Act, drafted in accordance with the requirements of the international human rights instruments to which Georgia is a party.

103. Issues relating to the use of firearms by law-enforcement personnel are governed by article 13 of the Police Act, which proscribes the use of firearms in places where injury may be caused to third persons, or against women with visible signs of pregnancy, minors, disabled persons and the elderly, except where such persons are putting up armed resistance or conducting group attacks, placing at risk the life of citizens or law-enforcement personnel. Comparable provisions are contained in article 11 of the State Security Service Act. In addition, both these Acts prohibit the use of firearms and weapons that cause unwarranted injury or present an unwarranted risk and are prohibited under international conventions and other international instruments.

104. According to Ministry of Internal Affairs data, over the period 1996-2000 there were eight registered cases of the unwarranted use of firearms by police officers. In all cases, official inquiries were conducted by the relevant bodies of the Ministry and an investigation by the procuratorial authorities. As a result, six criminal prosecutions were brought before the courts and appropriate convictions handed down. In one case, the police officer was discharged and various disciplinary measures were taken against his immediate superiors.

105. To prevent such occurrences, the Minister for Internal Affairs has ordered the conduct of regular training for police officers on issues of combat and service readiness, in which particular attention is given to studying the Police Act, which clearly identifies all instances in which police officials are permitted to use firearms.

106. Over the reporting period, there have been no recorded instances of the use of firearms by officials of the security services.

107. Measures to prevent the disappearance of individuals are of particular importance in the context of the obligation to prevent the arbitrary deprivation of life. The following information is provided on the procedure for investigating disappearances, as applied in Georgia.

108. Reports of the unexplained absence of individuals are fielded by the internal affairs authorities, both in writing and orally, including over the telephone, and must be logged immediately. On receiving such a report, the following steps are taken forthwith: the time and circumstances of the person's disappearance are ascertained, as well as his or her appearance and clothing, and efforts are made to locate the missing person while the trail is still hot, so to speak. Information about the disappearance is broadcast by television and published in other media, and photographs and descriptions of the missing person are circulated to the relevant authorities. In addition, steps are taken to identify unclaimed bodies, checks are made of establishments in the Ministry of Health and Social Security system, instructions are issued to the State Border Defence Department to detain the missing person at the State frontier, and so forth. If the person is not traced within a period of five days, a judicial investigation is ordered. A detailed list of the steps that must be taken with a view to locating missing persons is established by order of the Minister of Internal Affairs.

109. If, in the course of a judicial investigation, it becomes evident that the missing person has been the victim of a criminal offence, criminal proceedings are instituted by the procurator's office. The search for a missing person is terminated in two cases: if that person's whereabouts are established or if the person is declared legally dead.

110. During the reporting period, neither the State authorities nor the Office of the People's Advocate (Ombudsman) received any reports of disappearances in regard to which there were grounds to suspect the involvement of the law-enforcement authorities or the security forces.

**Article 7**

111. The Georgian Constitution states that the dignity and honour of the person are inviolable. The Constitution prohibits torture and inhuman, cruel and degrading treatment and punishment (art. 17).

112. Georgia acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in September 1994. Its initial and second periodic reports on implementation of the provisions of the Convention in Georgia were submitted to the Committee against Torture in June 1996 and August 1999, respectively. The initial report was considered by the Committee against Torture in November 1996. The Committee's concluding remarks were taken into account in preparing the second periodic report, which reflects the principles of Georgian legislation in this area, which has been almost completely overhauled. References are made to the second periodic report in this section of the present report, dealing with article 7.

113. The new Criminal Code entered into force in July 2000 and a number of its articles directly concern violations covered by article 7 of the Covenant. Most of the Covenant's provisions in question are reviewed below, in reference to specific aspects of the prohibition against torture. Suffice it to mention here that the category of criminal offences extends to "torture" proper (art. 126), which is interpreted as the causing of physical or mental suffering through the systematic application of battery or by other violent actions, which do not involve more or less serious harm to health. Among circumstances aggravating this crime are included abuse of official position and the motive of racial, religious, national or ethnic intolerance. The

definition of "torture" proposed by the Criminal Code does not exactly match the meaning of this term as used in the Convention against Torture, as the corresponding article of the Code does not include such motives as the obtention of information, intimidation and coercion.

114. Neither the Constitution nor the legislation of Georgia permit any restrictions on the prohibition against the use of torture, even in a state of emergency or under martial law. No circumstances may be adduced in justification or mitigation of acts which contravene article 7 of the Covenant for any purposes.

*Corporal punishment*

115. Prohibitions applied under article 7 include those against corporal punishment, whether used as a form of punishment, an educational expedient or a strictly disciplinary measure. In this regard, Georgian legislation and practice are fully in line with the requirements of the Covenant.

116. In its article 40, the Criminal Code lists the forms of punishment applied for the commission of crimes, but it does not include among these any form of corporal punishment. Similarly, the Detention Act, when indicating the disciplinary measures which may be applied against convicted persons, makes no provision for the application of corporal punishment (art. 30). Furthermore, article 125 of the Criminal Code, on battery, prescribes penalties of various degrees of severity, including even short-term rigorous imprisonment for up to two months, for the infliction of battery or the conduct of other acts of violence which cause physical pain without necessarily causing harm to health.

117. The use of corporal punishment is prohibited both in the education system and in institutional care establishments. If a teacher or any other school employee has recourse to corporal punishment, the pupil or the pupil's parent is entitled to lodge a complaint with the school administration or a higher authority. In such cases, an administrative penalty is applied against the person administering the corporal punishment. If the pupil has been injured as a result of the corporal punishment, the culprit is subject to criminal prosecution, on the basis of a medical finding. As for corporal punishment in the family, this is harder to establish, unless a complaint is lodged by the child who is the victim of such punishment. Nevertheless, corporal punishment which compromises the health of the child is a criminal offence.

*Solitary confinement*

118. The terms of pre-trial detention or remand in custody are laid down in chapters 19 and 20 of the Code of Criminal Procedure. In particular, article 146 of the Code, which regulates the length of such detention by the police, establishes that the review of the lawfulness and validity of detention must be completed not later than 12 hours from the time the detained person is brought into the police station or before any other investigative authority (para. 2). Under paragraph 6 of this article, persons held on suspicion must be questioned no later than 24 hours from the time they are brought into the police station or before any other investigative authority. The process of questioning prior to the laying of charges may not exceed 48 hours from the time

that the detained person is brought before the investigative authority. If in the course of the ensuing 24 hours the court fails to hand down a decision on the remand in custody of the person concerned or on the application of any other preventive measure, the person must be released forthwith (art. 146, para. 7).

119. Accordingly, no person may be held in custody for more than 72 hours awaiting charges or before being released. In these circumstances, it hardly makes sense to talk of the "length" of solitary confinement, even if the detained person is being held in isolation from others. Under article 149 of the Code of Criminal Procedure, detainees are held in short-term remand centres and military servicemen in guardrooms. The procedure for such detention is determined by Georgian law.

120. As for the remand in custody (pre-trial detention) of charged persons, in accordance with article 162 of the Code of Criminal Procedure, under no circumstances may the period of such remand or detention exceed nine months. Pursuant to the Detention Act, where a charged person held in pre-trial remand or detention has contravened the regulations and the internal procedures of the place of remand or detention, such person may be disciplined by being placed in punishment cells for periods of up to 10 days (art. 91).

121. The Detention Act prescribes various measures of a disciplinary nature which may be applied against convicts. The Act stipulates, however, that such disciplinary punishment may not be humiliating or insulting to the honour and dignity of the convict (art. 30, para. 10). Such disciplinary measures include confinement in punishment cells for periods of up to 20 days (up to 10 days for those in young offenders' institutions) and, for those in strict regime establishments, solitary confinement for periods of up to one year (art. 30, paras. 6 (e) and (h)). Neither women (art. 30, para. 7) nor minors (i.e. persons under 18) may be placed in solitary confinement.

*Conduct of medical and scientific experiments*

122. This area is regulated by the Health Care Act, adopted in December 1997. The Act clearly states that the rights of ailing or healthy volunteers participating in scientific research are protected by Georgian law and the universally recognized International Ethical Guidelines for Biomedical Research Involving Human Subjects. Persons without active legal capacity or lacking the capacity to take an informed decision may only participate in medical research on their prior express consent (given at a time when they were capable of taking informed decisions) and, in the absence of such consent, with the informed consent of their parents or legal representatives (art. 8, paras. 2 and 11).

123. The chapter of the Act dealing with medical and biological research directly addresses the issue of upholding the rights and interests of persons as subjects of research. Such persons must be given full information regarding the purposes, methods and expected results of the research, and of the risk and possible discomfort involved. Medical and biological research may not be conducted without the written informed consent of the persons participating in such research. There is a mandatory requirement for such persons to be informed of their right at any

stage of the research to refuse to participate (art. 109). A person without active legal capacity may also be the subject of medical and biological research on the same conditions, provided he or she does not resist such participation and the informed consent of a relative or legal representative has been obtained (art. 110).

124. Persons held in penal establishments enjoy all the rights enumerated above and their participation in medical and biological research is only permitted on condition that the results of such research are expected to bring a direct and considerable benefit to their own health (art. 112).

125. All in all, as stipulated in the Health Care Act (art. 108), the research risks and the expected positive results must be weighed against each other before any medical and biological research involving human participation is commenced. In the conduct of research, the interests and well-being of the persons involved as subjects of the research outweigh the interests of science and society.

*Expulsion and extradition*

126. With regard to the legal regime governing the expulsion, return and extradition of persons, reference is made to Georgia's second periodic report under the Convention against Torture (paras. 34-39, 62-65).

*Training and information relating to the prohibition on torture*

127. Regular training is organized for Ministry of Internal Affairs personnel with a view to enhancing the professional level of police employees. During this training, commanding officers of the respective units give close attention to issues of human rights protection in the context of the treatment of convicts and detainees. The topics covered in the courses include familiarization with the Convention against Torture. Human rights issues are also included in the curricula of the Academy of the Ministry of Internal Affairs, where law-enforcement personnel undergo their initial training and attend further training and refresher courses.

128. On 1 January 2000, the Georgian penitentiary system was placed under the jurisdiction of the Ministry of Justice, but the staff of the Corrections Department has remained more or less the same as it was under the Ministry of Internal Affairs. Department staff have received appropriate training in the treatment of convicts and persons held in pre-trial detention, in accordance with the requirements of the Detention Act. Under article 1, paragraph 3, of the Act, legislation on detention shall be consistent with the provisions of the Georgian Constitution and universally recognized principles and norms of international law.

129. Here too reference is made to Georgia's second periodic report under the Convention against Torture (paras. 70 and 71).

*Guaranteeing protection against torture*

130. The investigative bodies of the Ministry of Internal Affairs and the Ministry of Security and those of the procuratorial authorities are strictly guided, in conducting preliminary

investigations and other investigative activities, by the provisions of the Code of Criminal Procedure. Accordingly, practically every action involving restrictions on the constitutional rights and freedoms of people is subject to judicial and departmental monitoring.

131. The procedural rules of the Code of Criminal Procedure apply to detainees and arrested persons. In accordance with the principles of due process, arrested and detained persons (i.e., suspects) enjoy the following rights and guarantees provided under the Code:

- To receive in their hands, within 12 hours of their detention, a copy of the decision to institute criminal proceedings, with an indication of the charge;
- To give or not to give testimony;
- To have the services of counsel and to meet such counsel in private for periods not exceeding one hour per day;
- Where they do not know the language in which the legal proceedings are conducted, to use the services of an interpreter during the conduct of questioning and other investigative actions;
- After their first questioning, to demand a free medical examination and to receive a written report thereon;
- To submit petitions, to enter pleas and to present evidence;
- To file complaints with the procurator or the judge against the actions or decisions of the investigative authorities, persons conducting the initial inquiry or detectives;
- Immediately to inform relatives or friends of their place of detention or their whereabouts;
- To receive compensation for damage caused to them by unlawful and unwarranted detention;
- To receive from the person conducting the initial inquiry (detective) an exhaustive explanation of their rights (Code of Criminal Procedure, art. 73).

132. In this context, attention is also drawn to Georgia's second periodic report under the Convention against Torture (paras. 79-81).

133. The above rights and guarantees of persons suspected of crimes also extend, pursuant to article 75 of the Code of Criminal Procedure, to accused persons.

*Statements made under torture*

134. Under article 42, paragraph 7, of the Constitution, evidence obtained in a manner contravening the law has no legal effect.

135. The Code of Criminal Procedure contains a number of provisions reflecting the requirement that statements made under coercion or torture must be deemed inadmissible. These are described in more detail in Georgia's second periodic report under the Convention against Torture (paras. 119-121).

136. The Criminal Code also includes an article (art. 335) which categorizes as a criminal offence coercion by procurators, detectives or persons conducting the initial inquiry of suspected and accused persons, victims and witnesses to give evidence through the use of threats or other unlawful actions. Under the provisions of this article, persons committing acts of coercion involving the use of force, bullying or torture, are liable to penalties in the form of the deprivation of liberty for terms of between two and eight years.

*Right to lodge complaints. Compensation and rehabilitation*

137. Detailed information on the procedures for the submission and consideration of complaints relating to treatment prohibited under article 7 of the Covenant is contained in Georgia's second periodic report under the Convention against Torture (paras. 100-108). Further to this it might be noted that, following the parliamentary elections in October 1999, the parliamentary Committee for Human Rights and Ethnic Relations was replaced by the Committee on the Protection of Human Rights, Citizens' Petitions and the Building of Civil Society. The Georgian Parliament is currently preparing a bill designed to strengthen the implementation of the monitoring functions of the legislature.

138. Issues relating to the compensation and rehabilitation of torture victims are governed by the Code of Criminal Procedure. Reference is made in this context to Georgia's second periodic report under the Convention against Torture (paras. 110-118).

139. According to Ministry of Internal Affairs information, over the period since Georgia submitted its initial report under the Covenant, there has been one complaint, made in 1988, of the use of torture by employees of the police. The ensuing official investigation found no evidence of torture. The relevant materials were handed over to the procuratorial authorities.

140. At the same time, it should be noted that the annual reports of the Georgian Ombudsman, regarding the human rights situation in Georgia for the years 1998 and 1999, cite a number of instances where there were grounds to suppose that measures prohibited under article 7 of the Covenant had been employed. Comparable cases have, on a number of occasions, also been brought to the attention of the appropriate State authorities, including by the media. In all cases investigations have been conducted and in certain instances criminal proceedings have been instituted, yet no actions have actually been definitively categorized as "torture". As a rule, the culprits have been punished under the article of the Criminal Code providing penalties for action *ultra vires*. In our view, this is partially attributable to the shortcomings in the way that article of the Code addresses the issue of torture, referred to in paragraph 113 above.

**Article 8**

141. The Constitution states that all people are free from birth (art. 14). Slavery has never existed in the history of Georgia and the country has never practised the slave trade. Other comparable forms of servitude are traditionally unacceptable in Georgian society.

142. With regard to the stipulation in paragraph 3 (a) of article 8, we should note that, under the Constitution, labour in Georgia is free (art. 30, para. 1). The Criminal Code contains an article (art. 150) on coercion, under which the physical or mental coercion of any person to perform any actions or to abstain from performing any actions which that person is entitled to perform is deemed to be a criminal offence. Since persons under the jurisdiction of Georgia enjoy the right to the freedom of labour, under the country's law no one may be required to perform forced labour.

143. A form of servitude might occur in a situation where a person, by force of circumstances, becomes dependent on another person. Such situations might include sexual exploitation or drug trafficking. In this context, it might be useful to describe the relevant provisions of Georgian criminal law. With regard to the problem of sexual exploitation, the following actions are categorized as punishable offences: inducing persons to engage in prostitution through the use or threat of the use of force; organizing or running establishments of ill repute for the conduct of prostitution; inducing minors to engage in prostitution or other sexually abusive practices (arts. 253, 254 and 171, para. 1, of the Criminal Code). As for drug trafficking, the following are deemed to be punishable criminal offences: the obtention and sale of narcotic substances, analogues and precursors, as well as psychotropic substances and their analogues or other hard drugs; the unlawful import, export and carriage through Georgia of narcotic substances, their analogues or precursors and also of psychotropic substances; and inducing others to use narcotic substances (arts. 260-263 and 272 of the Criminal Code).

144. In addition, Georgian law has criminalized such actions as the buying or selling of minors, or the conduct of other unlawful transactions involving minors, including with a view to the unlawful transport of the minor across the frontier (art. 172, paras. 2 and 3).

145. The Criminal Code prescribes different types of penalties for the commission of specific crimes (art. 40). These penalties include such measures as socially useful work and garnishment of earnings. Under the provisions of relevant articles of the Code, socially useful work is defined as the conduct of socially useful tasks by convicted persons, in their free time and without remuneration. The amount of such work varies between 20 and 400 hours and it must be performed over periods not exceeding four hours per day. Category I and II disabled persons, pregnant women and mothers with children aged seven and under, old-age pensioners and military personnel on fixed-term service may not be sentenced to perform socially useful work (art. 44). Garnishment of earnings may be imposed for periods of between one month and two years and is carried out at the workplace of the convicted person. Deductions are made from the convicted person's earnings and retained by the State at a level established in the sentence handed down by the court, within the limits of 5-20 per cent of those earnings (art. 45). In the event that convicted persons should refuse to perform or persistently evade socially useful work, or persistently evade garnishment of earnings, these forms of punishment may be replaced by restrictions on their freedom, short-term rigorous imprisonment or the deprivation of liberty.

146. The labour activities of convicts are governed by the Detention Act and exercised in accordance with the procedures established by labour legislation. The labour of convicts is organized, as a rule, in the territory of the facility where their sentence is being served. Convicts have the right to select their form of labour from a range of tasks presented to them by the facility administration. Convicts may not be compelled to perform labour affronting human honour and dignity. Convicted minors perform their labour during after-study hours and the combined length of their work and study may not exceed eight hours per day. Convicts may only perform overtime work or work on holidays or non-working days with their own consent. Their working day may not exceed eight hours in length.

147. When suggested by the facility administration and on an exceptional basis, the use of convict labour outside the facility where such convicts are serving their sentence may be permitted in the event of a natural disaster, for the purpose of averting or eliminating breakdowns in production facilities, or for preventing accidents, and also to improve the grounds, buildings and amenities of their penitentiary facility. These tasks may only be carried out by convicts with their own consent and on condition that they are conducive to attainment of the purposes of their punishment.

148. A total of 50 per cent of the payment disbursed for the labour of convicts is paid out to the convicts themselves for their personal needs, 15 per cent is transferred to the State budget, 10 per cent paid to the penitentiary facility in question, to cover its expenses, and 25 per cent may be retained by writ of execution in the manner prescribed by law. If there is no such arrangement, the corresponding amount is paid into the (deposit) account of the convicts and made available to them upon their release.

149. The administration of penitentiary facilities is obliged to ensure working conditions which are safe for life and health. If, during the serving of their sentences, convicts are rendered disabled as a result of their production activities, they are entitled, after their release, to pensions and the payment of compensation for the damage caused in cases and according to the procedure prescribed by law.

150. The above clauses are contained in articles 53-56 of the Detention Act and make no provision for the forced labour of convicts. Neither, however, does the Act stipulate the right of a convict not to work at all. On the contrary, under article 27, paragraph 1 (a), convicts are obliged to perform their labour in working areas set aside by the administration of the penitentiary facility on the conditions established by the Act and by the facility's own internal regulations. In this way, the compulsory nature of the labour of convicts is prescribed by law, irrespective of the convicts' own wishes, and this, in our view, is inconsistent neither with article 8, paragraph 3 (a), of the Covenant, nor with the Constitution, in the light of the interpretation provided in article 8, paragraph 3 (e) (i), of the Covenant.

151. With regard to the issue of suspended sentences, in such cases the courts are entitled to sentence the convicted persons to additional forms of punishment or to impose the performance of other duties conducive to their correction (Criminal Code, arts. 63 and 65). These provisions are similarly not inconsistent with the requirements of the Covenant.

*Military and alternative service*

152. The following periods of military service are established for military personnel in Georgia:

- Military personnel called up for the performance of their fixed-term military service: 18 months;
- Military personnel with higher education called up for the performance of their fixed-term military service: 12 months;
- Officers of the military reserve: 24 months;
- Regular officers: not less than 10 years.

153. As laid down by the Military Servicemen (Status) Act, military service represents a particular form of State service and has as its goal ensuring the defence of Georgia (art. 10, para. 1). Military personnel may not be assigned to do work which is not directly connected with their service, except in cases provided by law.

154. The Non-Military (Alternative) Service Act was adopted in October 1997. Regulations have already been prepared on the performance of alternative service and on the alternative service department to be established within the Ministry of Health and Social Security. In this way the requirement that alternative service should be strictly civilian in nature has been duly observed. We anticipate that the Non-Military (Alternative) Service Act will effectively be in operation in time for the November 2000 military conscription exercise. According to data received up to mid-May 2000, 367 conscripts had already expressed the desire to perform alternative service.

*Work performed in a state of emergency*

155. In October 1997, the State of Emergency Act and the Martial Law Act were adopted and entered into force. They are discussed in more detail in the present report in the section dealing with article 4 of the Covenant. The acts contain identical provisions to the effect that, in a state of emergency or under martial law, the supreme authorities of the Georgian executive are entitled:

- Temporarily to prohibit the workers and office employees of enterprises and organizations of strategic and vital importance from resigning from their jobs (except where there are compelling grounds for such resignation);
- To ban the organization of strikes;
- To recruit able-bodied citizens to work in such enterprises, establishments and organizations (at an average level of remuneration), as well as to assist in cleaning up after a state of emergency or period of martial law, while at the same time taking steps to ensure their occupational safety.

156. In addition, during a state of emergency and under martial law, those in charge of enterprises, establishments and organizations are entitled, where necessary, to transfer their workers and office employees without their consent on a temporary basis to jobs which are not covered by their labour contract.

157. The above provisions of articles 4 and 6 of the State of Emergency Act and the Martial Law Act are not inconsistent with the conditions of article 8, paragraph 3 (c) (iii), of the Covenant.

158. In 1997 a department of emergency situations and civil defence was created, by presidential decree, within the Ministry of Internal Affairs. A standing interdepartmental commission on emergency situations and civil defence was set up under the National Security Council, and this body effectively serves as the lead organization in matters of public protection during emergencies. A bill on protecting the population and different areas of the country from emergencies has been prepared and, once it has been passed, a definitive decision will be taken to identify the body of the executive which will be responsible for tackling issues arising during emergencies.

159. In concluding our discussion of this topic, we should note that all the legal provisions enumerated under the section are to be implemented on a non-discriminatory basis and are consistent with other requirements under the Covenant.

**Article 9**

160. Reference was made in Georgia's initial report to article 18 of the Constitution, which guarantees the rights provided for in article 9 of the Covenant. It is, nonetheless, expedient to reproduce the provisions of article 18 here in the order in which their subject matter is covered in article 9 of the Covenant.

161. Article 18 of the Constitution proclaims that liberty of the person is inviolable and that it may neither be removed nor restricted in any way except by decision of a court (paras. 1 and 2). When people are detained or arrested, they must be informed without delay of their rights and of the reasons for the restriction of their liberty. Persons who so request must be given the assistance of counsel from the time of their detention (arrest) (para. 5). Detainees or persons whose liberty has otherwise been restricted must be brought before an appropriate court within a maximum of 48 hours. If the court does not decide within the next 24 hours that the person should be remanded in custody or otherwise restrained, he or she must be released without delay (para. 3). Persons suspected of having committed a crime may not be held in short-term detention for more than 72 hours; persons charged with a crime may not be held in pre-trial detention for more than nine months (para. 6). Persons who are unlawfully detained (arrested) are entitled to compensation (para. 7).

162. The above provisions of the Constitution meet the requirements of article 9. Consequently, Georgian law is not at variance with this article of the Covenant either.

163. The Code of Criminal Procedure contains a special article, article 12 ("Inviolability of the person; protection of personal honour and dignity"). It reads as follows:

> "Everyone is entitled to liberty, inviolability of the person, and protection of his or her honour and dignity;
>
> "Restriction of liberty without lawful grounds and otherwise than in compliance with the law is prohibited. Persons who are placed in short-term or pre-trial detention must be informed without delay of the reasons for their detention or arrest;
>
> "Suspects may not be held in short-term detention for more than 48 hours. Persons may not be placed in pre-trial detention or confined for examination to a medical institution without a judge's consent or a court order. Judges, procurators, investigators and persons conducting initial inquiries must release without delay persons unlawfully placed in short-term or pre-trial detention;
>
> "Persons whose liberty has been unlawfully or unwarrantedly restricted are entitled to full compensation for the damage that they suffer".

164. The Code of Criminal Procedure classifies short-term detention as a lawful coercive measure. Such measures are applicable: when a party to criminal proceedings impedes action by the investigatory or judicial authorities or fails to discharge procedural obligations; or to put an end to conduct that is hindering the functioning of the criminal justice system (art. 133). The bringing of a detainee to a police post or before the competent person in a body conducting an initial inquiry shall be followed immediately by the making of a formal record of the detention and its witnessing, by the appending of their signatures, by the record-writer, the detainer and the detainee. The lawfulness of, and justification for a detention must be verified within 12 hours of the detainee's being thus brought in, and the competent official of the organ making the initial inquiry shall then issue a reasoned order for the opening of criminal proceedings and the charging and remand in custody of the suspect or for the dropping of the matter and the detainee's release. The procurator must be immediately informed of the content of the order. If the order is for the opening of proceedings and the remand in custody of suspects, their rights must be explained to them in writing. Persons detained on suspicion must be formally questioned within 24 hours of being brought in and, if they so request, must be examined by a doctor after the questioning.

165. No one may be held in short-term detention for more than 48 hours without being charged. If no decision is issued within the next 24 hours to remand persons in custody or to subject them to some other preventive measure, they must be released without delay.

166. Persons being held in short-term detention must be released if: the suspicion that they have committed a crime is not confirmed; their remand in custody is not thought necessary; the legal time limit for duration of short-term detention has expired; there are serious violations of the Code of Criminal Procedure during their detention.

167. The State must pay full compensation for damage resulting from unlawful or unwarranted short-term detention, irrespective of whether the detainee is convicted of an offence (Code of Criminal Procedure, arts. 146 and 150).

168. The law with respect to the conduct of preliminary inquiries has been changed so that, until criminal proceedings have been instituted, police inquiries that restrict constitutional rights and freedoms may only be carried out by order of a judge or, in cases concerning infringements of the constitutional order or of State security, a judge of the Supreme Court's Criminal Justice Division (art. 65).

169. The Criminal Code provides for penalties of varying severity, ranging up to deprivation of liberty for from 4 to 15 years, in the event of knowingly unlawful short-term or pre-trial detention.

*Other instances of deprivation of liberty not connected with criminal proceedings*

170. With respect to article 9, paragraph 1, it should be noted that Georgian criminal law qualifies as crimes other instances of unlawful deprivation of liberty besides unlawful short-term or pre-trial detention. Article 143 of the Criminal Code criminalizes unlawful deprivation of liberty by whomsoever and for whatsoever reason it is committed. A note to that article of the Code provides that, if a person unlawfully deprived of liberty is voluntarily released within 72 hours, no criminal proceedings will be opened against the detainer, providing the latter's actions carry no indicia of another crime and providing the victim forgoes the filing of a complaint. In addition, the Criminal Code recognizes as crimes acts such as unlawful internment and keeping in a psychiatric hospital, including when they are committed in exercise of official authority (art. 149).

171. Hostage-taking is a frequent form of unlawful deprivation of liberty. The Criminal Code qualifies it as a separate crime (art. 144). The note cited above with regard to article 143 of the Code applies to this article too.

*Procedure for remand in custody and duration of pre-trial detention*

172. The Code of Criminal Procedure states that no one may be remanded in custody otherwise than by order of a judge or some other judicial decision and that unlawful remand in custody entails the person's immediate release (art. 159). Preventive remand in custody is permissible only if the person has been charged with a crime punishable by deprivation of liberty for more than two years. The following may not, as a rule, be remanded in custody: persons who are ill, elderly (women over 60, men over 65) or more than 12 weeks pregnant and women who have children less than one year old; in addition, remand in custody may be dispensed with when the offence was committed by negligence (ibid.).

173. Article 162 of the Code of Criminal Procedure provides that the duration of a period of pre-trial detention shall be reckoned from the suspect's delivery to a police institution (authority of initial inquiry) or, in other instances, from the time of enforcement of a judicial order for

pre-trial detention (para. 1). Remand in custody during preliminary investigation of a case may not last more than two months from the time of detention of a suspect or from the time of remand of a person charged with an offence (para. 3). When a preliminary investigation is so complicated that it cannot be completed, the duration of an accused person's remand in custody may, upon application by a procurator, be extended to three months by a judge at the place of the proceedings. The duration of an accused person's remand in custody may, for the same reason, be extended to six months by order of: the chief military or transport procurators; the procurators of the city of Tbilisi or of the Abkhaz or Ajar autonomous republics; district procurators; judges of the investigatory division of a court of appeal. In exceptional cases, the duration of remand in custody may, upon application by the Procurator-General or by order of a judge of the Supreme Court's criminal division, be extended to more than six, but not more than nine months. Thereafter, the accused must be released without delay (para. 3).

174. The question of the total duration of detention during judicial proceedings up to and including sentencing goes beyond the bounds of the article currently under discussion. It is noteworthy, however, that detention of defendants pending judgement may not exceed: in cases before district (urban) courts, six months from the time the case is entrusted to the court; in cases before the Supreme Court, circuit courts or an appeal court, 12 months from the same point. In special circumstances, the time limit may, upon application from the court hearing the case, be extended by six months by the Plenum of the Supreme Court. Defendants may not be held for longer (Code of Criminal Procedure, art. 162, paras. 7 and 8).

*Right to compensation for unlawful arrest or detention*

175. This right is provided for in the relevant articles of the Code of Criminal Procedure. They are described below.

176. Persons whose liberty has been restricted are entitled to full compensation for material injury if the arrest or detention was unlawful or unwarranted. The State provides compensation for physical injury through the payment of a sum to offset treatment costs or the loss or diminution of capacity to work if the disorder in question was caused by a breach of the rules of detention. Compensation for moral injury is provided through the publication of apologies in the press or other mass media or through monetary compensation (art. 165).

177. Regardless of the outcome of a case, compensation must be provided if an accused person suffers material, physical or moral damage as a result of unlawful or unwarranted arrest or detention or confinement in a medical institution for the purposes of examination, or other unlawful or unwarranted acts by law-enforcement organs (art. 221).

178. If a person's health is found to have suffered as a result of breach of the rules for arrest, detention or confinement in places of restriction or deprivation of liberty, or of failure to provide timely medical care, the State must provide full compensation for the injury. The compensation may be demanded and obtained during criminal proceedings, or during or within six months of the serving of a sentence (art. 224).

179. When there is information to the effect that damage has been caused as a result of unlawful or unwarranted actions by a person conducting an initial inquiry or pre-trial

investigation or a procurator, the victim may file a complaint with a court prior to the completion of the pre-trial investigation. There must be a judicial decision on the matter within one month. If grounds for rehabilitation are identified in a court, following the closure of a case, in a judgement of acquittal or in a ruling entailing rehabilitation, the court must recognize the rehabilitee's right to compensation for all the forms of damage and issue a separate ruling (order) to that end (art. 227).

*Statistics concerning arrests and detention*

180. There follow annual statistics for the period since the submission of the initial report.

In 1996, the number of persons arrested was 3,133. Of this total, 2,778 people were remanded in custody, and of them 355 were released: 325 on a decision to apply to them a preventive measure other than detention, 20 because the suspicion of their involvement in a crime could not be confirmed, and 10 because of expiry of the time limit for remand in custody.

In 1997, the number of persons arrested was 2,796. Of this total, 2,340 people were remanded in custody, and of them 456 were released: 425 on a decision to apply to them a preventive measure other than detention, 9 because the suspicion of their involvement in a crime could not be confirmed, and 22 because of expiry of the time limit for remand in custody.

In 1988, the number of persons arrested was 2,617. Procurators approved, or judges ordered remand in custody in 2,257 of these cases, and 360 people were released: 352 on a decision to apply to them a preventive measure other than detention and 8 because of expiry of the time limit for remand in custody.

In 1999, the number of persons arrested was 3,380. Judges ordered the remand in custody of 2,676 of them, and 613 people were released: 593 on a decision to apply to them a preventive measure other than detention, 12 because the suspicion of their involvement in a crime could not be confirmed, and 8 because of expiry of the time limit for remand in custody.

The number of persons arrested in the first quarter of 2000 totalled 647. Judicial orders for remand in custody were issued in 623 of these cases, and 24 people were released: 21 on a decision to apply to them a preventive measure other than detention, 1 because the suspicion of involvement in a crime could not be confirmed and 2 because of the expiry of the time limit for remand in custody.

*Statistics concerning persons assigned to compulsory treatment in psychiatric institutions*

181. The Criminal Code provides that courts may order compulsory medical attention for persons:

- Who have committed crimes in a state of insanity or of diminished responsibility;

- Who, following the commission of a crime, have become mentally disordered such as to preclude sentencing or the enforcement of a sentence;

- Who are found to need treatment for alcoholism or drug addiction (art. 101).

The responsibility for fixing the type of compulsory attention, which may include assignment to in-patient care in a psychiatric institution, also lies with the courts (art. 102).

182. For the period 1996-2000, the total number of persons assigned by internal affairs authorities to compulsory treatment in psychiatric institutions was 1,375.

183. The Criminal Code further provides that it is for the courts to extend, alter or terminate periods of compulsory medical treatment and that their action must be based on representations from the authorities of the medical institution concerned (art. 105, para. 1).

*Administrative detention*

184. The procedure and the conditions for administrative detention are governed by article 32 of the Administrative Offences Code. This article provides that administrative detention for periods of up to 30 days may be ordered and enforced for the commission of specific types of administrative offence, but only in exceptional circumstances. Competence to make orders for administrative detention lies with the judges of district (municipal) courts.

185. Pregnant women, women with children below the age of 12, persons below the age of 18 and category I or II disabled persons may not be subjected to administrative detention.

186. The procedure for the serving of sentences of administrative detention and for the use of the labour of persons subjected to this penalty is covered in articles 303 and 310 respectively of the Administrative Offences Code. These articles provide that persons subjected to administrative detention shall serve their sentences in places designated by the internal affairs authorities for that purpose and in the manner provided for by law. Such persons are employed in physical labour organized by the local authorities. Periods of administrative detention at the detainee's place of permanent employment are not paid.

187. Administrative detention is employed for offences such as small-scale misappropriation of State or public property, rowdyism, collective public consumption of spirits, public drunkenness, deliberate refusal to obey a lawful request from a police officer, breaches of foreign-exchange regulations, procurement and possession of small quantities of narcotics, or use of drugs without a medical prescription.

*Use of house arrest as a preventive measure*

188. Use of house arrest as a preventive measure began with the adoption of the new Code of Criminal Procedure, which came into force in August 1998. House arrest does not entail complete isolation from society, but is a very effective preventive measure. The statistics show that it is employed only rarely.

189. Information from the National Procurator's Office shows that, of 3,974 persons charged with offences in 1999, 22 were subjected to house arrest and 2,090 to detention as a preventive measure. The tendency for detention to be the principal preventive measure has continued in 2000. It is noteworthy that house arrest is virtually never ordered in the case of juvenile offenders. For example, of the 668 minors against whom internal affairs agencies or a procurator instituted criminal proceedings in 1999, only 3 were subjected to house arrest, while 177 were subjected to detention as a preventive measure.

190. The fact that house arrest is rarely used as a preventive measure is attributable to a number of objective factors. Article 166 of the Code of Criminal Procedure provides that house arrest may only be ordered for the following categories of person: category I and II invalids; people with a serious chronic disorder or infectious disease; women who are more than 12 weeks' pregnant, and people in difficult family circumstances. Account is also taken of the nature of the offence in question, the offender's record and other factors. It must also be said that house arrest is connected with the use by the law-enforcement agencies of certain technical devices and the taking of other concrete measures entailing considerable expense. The law-enforcement agencies do not at present have the necessary resources.

*Practical realization of the right to compensation for unlawful arrest (detention)*

191. According to information from the national Procurator's Office, there have been no cases in recent years of citizens requesting and receiving compensation for unlawful arrest or detention.

192. The Ministry of Internal Affairs reports that in 1998 two citizens sought compensation through the courts for unlawful arrest. Compensation in the amount of 9,275 lari (US$ 1 = 1.96 lari) was paid by the Ministry's Logistics and Finance Department.

**Article 10**

*Legal foundations of the operation of the penal correction system*

193. In reforming the penal correction system and creating a legal basis for its operation, serious attention has been given to those principles of international law that establish minimum guarantees regarding the treatment of convicted persons, meaning, in particular, such United Nations instruments as the Standard Minimum Rules for the Treatment of Prisoners (1975), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture (1982).

194. Operation of the penal system is governed by legislative and subordinate acts that have revised the guarantees for the protection of detainees' and convicted persons' rights, define their

obligations and regulate matters relating to conditions of detention, medical care, education, work and social protection. The instruments regulating detainees' rights and obligations that have been adopted in the course of reform of the penal system include:

- Detention Act (July 1999);
- Order of the Ministers of Justice, Health and Social Protection concerning food, clothing and sanitation standards applicable to convicted persons (December 1999, No. 5/500/t);
- Joint Order of the Ministers of Justice and Education on education and vocational training for convicted persons (December 1999, No. 614/6);
- Order of the Minister of Justice on social services for convicted persons (December 1999, No. 361);
- Order of the Minister of Justice on a rehabilitation centre for convicted persons (December 1999, No. 368).

All these instruments were drawn up taking into account the principles of international law and were reviewed by United Nations specialists. Expert opinion is that Georgian law on the penal system meets international standards. The condition of the physical facilities within the prison system unfortunately does not measure up to requirements.

195. Pursuant to the Detention Act, particular aspects of the operation of the penal system are governed by a total of some 40 orders from the Minister of Justice.

*Condition of the penal system following its transfer to the Ministry of Justice*

196. The transfer of the penal system to the Ministry of Justice unquestionably represents a step forward as regards the protection of rights and freedoms and humanization of the treatment of prisoners. It has brought about a number of positive changes:

- Persons deprived of liberty have been transferred from the authority of the Ministry of Internal Affairs to that of a neutral organization, the Ministry of Justice;
- Changes, including in particular the abolition of strengthened-regime and special-regime institutions, have been made in the structure of the corrections system;
- A convoy unit has been established within the Corrections Department's special guard service;
- The frequency with which prisoners can receive parcels and visits from relatives has been increased;
- Telephones have been installed in all penal institutions;

- The calorie content of foods has been sharply improved;

- Prisoners now have the right to pursue higher education while serving their sentences;

- The rehabilitation services have been charged with catering for offenders' welfare not only while they are serving their sentences but also at their places of residence during the year following their release. They are to receive active assistance in this regard from the standing bodies for public monitoring of penal institutions that have been established by order of the Minister of Justice.

197. Penal institutions are monitored by the Ministry of Justice and the organs of the Procurator's Office for supervision of compliance with the law in penal establishments. Moreover, as already mentioned, there exist standing monitoring bodies established pursuant to article 93 of the Detention Act; these comprise representatives of local authorities, public figures, representatives of non-governmental and religious organizations and other persons. These bodies act on the basis of regulations approved by an order of the Minister of Justice in December 1999. The bodies within the Ministry of Justice responsible for monitoring penal institutions include an executive division and a general inspectorate.

In addition, the penal system is under constant watch by the Ombudsman, the Parliament's Human Rights Committee and the National Security Council's Human Rights Protection Service.

*Human rights training for prison service personnel. Right of convicted persons to appeal against breaches of their rights*

198. Human rights training for prison service staff as regards the treatment of prisoners is effected through systematic skills' improvement. This means, in particular, attendance by staff members at national and international conferences, meetings and seminars. During the period 1996-2000, staff from the Georgian penal service have taken part in approximately 30 such events; the results have been circulated and are being followed as examples of modern practice. In addition, a specialized unit for dispensing human rights training to prison system staff is being established under the Ministry of Justice.

199. Article 26 of the Detention Act entitles convicted persons to appeal against unlawful acts by the staff or authorities of a penal institution, the Corrections Department or another State institution (para. B). The authorities of penal institutions may neither delay nor inspect communications addressed by prisoners to a court, the Corrections Department, a lawyer or a procurator (para. 2).

200. Article 15 of the Ombudsman Act guarantees the privacy of applications, letters and complaints addressed to the Ombudsman by any category of person deprived of liberty, i.e. by persons in pre-trial detention and convicted prisoners alike. The said communications must be forwarded to the Ombudsman without delay.

*Rules for the detention of persons charged with offences and convicted persons*

201. The Detention Act provides that in penal institutions the following categories of prisoners must be housed separately from the others: women; minors; first offenders; persons sentenced to life imprisonment. It also provides (art. 22) that persons with AIDS or other uncontrollable infectious disorders must be separately accommodated in the institution's infirmary. Detainees awaiting trial must, as provided by the Code of Criminal Procedure, be housed in special sections of prisons and have no contact with convicted prisoners (art. 85).

202. It can be seen from the conditions set down in the Detention Act for the detention of unconvicted and convicted persons that the former enjoy certain privileges. They do not have to work and may not be subjected to such disciplinary penalties as deprivation of visits, withholding of parcels or money orders, or solitary confinement. In addition, they are able to exercise the procedural rights provided for in article 76 of the Code of Criminal Procedure.

*Social rehabilitation of convicted persons*

203. The Corrections Department has a social service responsible for assisting convicted persons in making and maintaining social, legal and moral contacts and helping them to resolve personal or family problems. It promotes prisoners' awareness of the requirements of the law and puts them in contact with people who can help them to manage their lives following their release. Members of the social service head training groups for prisoners social adaptation.

204. In penal institutions, social issues are dealt with by a social worker appointed by the director of the institution. Such social workers are required to have undergone specialized higher education.

205. In preparing them for their release, prisoners are given help in resolving questions connected with the management of their personal life and in drawing up the necessary documents. They are informed that they are entitled to help within the framework of the general social security system. The preparations for release include notification by the social worker to the local authorities that the prisoners will need social assistance following their discharge.

206. As required by law, the creation of rehabilitation centres within penal institutions has recently begun, with a view to facilitating prisoners' social adaptation. The regulations on such centres are subject to approval by the Minister of Justice.

207. The articles of the Detention Act providing for the prison system's social service and social workers are numbers 57 to 61.

*Education and vocational training for detainees*

208. The authorities in penal institutions are obligated by article 44 of the Detention Act to provide conditions for prisoners to receive general education and vocational training. In

addition, article 45 of the Act makes it obligatory to provide State-funded primary education for imprisoned juveniles. Prisoners may also obtain a basic education at State expense, and prisoners who do not know Georgia's State language must be given the opportunity to study it.

209. With respect to vocational training, article 46 of the Detention Act requires that conditions for improving prisoners' vocational skills be created in penal institutions. Vocational training is voluntary for prisoners who have some specialized knowledge and the juveniles who have not undergone any specialized education. Preference is given in the vocational training courses to occupations that can be studied in the context of a penal establishment.

210. In addition to the foregoing, the authorities of penal institutions are entitled to afford prisoners opportunities of taking distance-learning courses at secondary, specialized and higher educational establishments. The procedure and conditions for such studies are determined by the Minister of Justice in consultation with the Ministry of Education.

*Regimes and conditions of detention for convicted persons*

211. The Detention Act (art. 6) provides for the existence in Georgia of the following types of penal institution:

- General-regime institutions;
- Strict-regime institutions;
- Prisons.

Offenders who are under 18 at the time of sentencing are sent to juvenile reform institutions.

212. Prisoners are entitled by law to visits from members of their families, relatives and other persons. For example, prisoners who are nationals of a foreign country are entitled to meetings with that country's consular representatives or with third-country diplomats who are looking after their interests.

213. Two types of visit are possible: short visits (up to three hours) and long visits (up to three days). The right to short visits is granted to family members, relatives and other persons, while the right to long visits is confined to a strictly limited circle of persons (spouses, parents, grandparents, natural and adoptive children, adoptive parents, sisters, brothers, and persons with whom the offender was living in a common household for two years prior to being arrested).

214. All prisoners are entitled to totally unrestricted meetings with their defence counsel. That also applies to meetings with the Ombudsman. Penal institution staff may observe such meetings visually, but without listening to what is said.

215. Reform, general-regime and strict-regime institutions are entitled, subject to a procurator's agreement and bearing in mind the offender's personality and the gravity of the

offence, to permit prisoners, in exceptional circumstances, to leave the institution for up to seven days in the event of a reliable report of the death or life-threatening illness of a near relative or when a natural disaster has occasioned the prisoner or the prisoner's family significant material loss.

216. Prisoners are entitled to send and receive unlimited quantities of mail and, when there is a public telephone in the institution, to use it (under the supervision of the authorities). Penal institutions are equipped to receive radio and television broadcasts and prisoners are entitled (subject to restrictions depending on the regime of the institution) to use their own radio and television receivers and audio and video recorders. Such devices must be used without disrupting the routine of the institution or disturbing other prisoners.

217. Prisoners may, at their own expense, subscribe to any literary works, newspapers or magazines they wish.

218. Persons in pre-trial detention are entitled to short visits to deal with personal or legal matters that cannot be handled without the participation of third parties. Such visits must be approved by the person carrying out the pre-trial investigation, a procurator or a judge. Foreign detainees have an unlimited right to meetings with their countries' consular officials or authorized diplomatic representatives. When important and urgent personal or legal matters require direct action by an accused person, a court may, on application by the investigating official, permit the accused's release for up to three days from detention.

219. All the above matters are governed by the Detention Act and by corresponding enabling orders from the Minister of Justice.

*Disciplinary system*

220. The Detention Act permits the following disciplinary measures to be taken against persons in pre-trial detention who breach the rules of, or cause a disturbance in a place of detention:

- Reprimand;
- Confinement in punishment cells for up to 10 days (art. 91).

The following disciplinary measures may be taken against convicted persons guilty within a penal institution of disorderly behaviour not constituting a crime:

- Warning;
- Reprimand;
- Withdrawal of the right to short or long visits;
- Confinement in punishment cells for up to 20 days or, in the case of a juvenile reform institution, up to 10 days;

- Withdrawal of the right to receive parcels, printed matter or money orders;

- Transfer to cell-type accommodation for up to six months (for persons serving a sentence in general-regime or strict-regime institutions);

- Solitary confinement for up to one year (in strict-regime institutions).

Female detainees guilty of breaches of the rules may be placed in cells for up to three months (art. 30).

*Minors: remand in custody and detention after sentencing*

221. Article 652 of the Code of Criminal Procedure permits remand in custody to be employed as a preventive measure against accused juveniles in the same way as against adults in the following circumstances: when the juvenile has been charged with a crime punishable by deprivation of liberty for more than five years and other preventive measures will not suffice to ensure proper behaviour; when the accused has disregarded a less severe preventive measure. Juveniles remanded in custody as a preventive measure must be housed separately both from adult detainees and from convicted juvenile offenders.

222. The Detention Act requires that persons who are less than 18 years old when sentenced to deprivation of liberty must serve their sentences in juvenile reform institutions (art. 82), with those guilty of serious crimes being kept apart from the other inmates (art. 83, para. 1).

223. Juvenile reform institutions comprise closed, semi-closed and open units. The type of unit in which offenders are to serve their sentences is decided by the authorities on the basis of the findings of a classification centre. Whatever the type of unit to which they are assigned, inmates have an unlimited right to short visits and monthly long visits from close relatives. Inmates who have served a quarter of their sentence may, subject to satisfactory study and behaviour, be granted improved conditions of detention and the right to two additional long visits a year (art. 83, para. 2, 4 and 5).

224. The procedure for implementing the above-mentioned provisions of the Detention Act is laid down in an order from the Minister of Justice on the regulations for juvenile reform institutions (December 1999).

*Statistics*

225. There are currently 17 institutions within the system of the Ministry of Justice's Corrections Department: 5 general-regime and 4 strict-regime institutions, 5 prisons, 1 juvenile reform institution; 1 medical facility for convicts with tuberculosis and 1 medical facility for pre-trial detainees and convicted persons.

226. Because of the country's serious economic problems, the penal system's physical facilities are not up to international standards. Most of the buildings in penal institutions are elderly and there are shortages of bedding, seasonal clothing, medical supplies, etc.

227. As regards the financing of the penal system, only once during the period 1996-2000 (in 1998) have the allotments from the State budget been paid in full. In 1999, the national budget only contained provision for the funding of protected items, whereas the penal system's actual expenditure was twice that amount.

228. The numbers of inmates of places of deprivation of liberty in 1996-2000 were as follows:

- 1996: 7,443 persons under sentence and 2,623 persons in pre-trial detention as a preventive measure;
- 1997: 8,186 persons under sentence and 2,066 persons in pre-trial detention;
- 1998: 8,290 persons under sentence and 2,166 persons in pre-trial detention;
- 1999: 6,392 persons under sentence and 2,197 persons in pre-trial detention;
- 2000 (first quarter): 6,589 persons under sentence and 2,367 persons in pre-trial detention.

229. The number of minors and women convicted of offences remained relatively low during the period under review. According to the latest figures, there are 41 minors serving sentences in juvenile reform institutions and 117 convicted women prisoners in general-regime institutions. It should be noted that, pursuant to article 22 of the Detention Act, women may not serve sentences anywhere other than in general-regime institutions. Moreover, article 39 of the Act lays down special conditions for the serving of sentences by pregnant women and mothers with children under the age of three.

230. The possibility of obtaining a pardon is an extremely important aspect of convicted persons' rights. The Constitution provides that pardon is the exclusive prerogative of the President. During the period 1996-2000, the President pardoned approximately 6,000 convicted persons, including 230 minors and 92 women. The figures for 1999 are particularly remarkable: large-scale pardons resulted in the freeing of 3,352 convicted persons, including 119 minors and 53 women.

231. In 2000, as part of his national reconciliation policy, the President of Georgia has pardoned some 300 convicted supporters of the former president, Zviad Gamsakhurdia. This pardon concerned people serving sentences for a wide variety of crimes, murder being the only one excluded. The President has also pardoned, subject to the same exception, people who fought for Georgia's independence and territorial integrity.

*Medical care for, and the health situation of, convicts and individuals in pre-trial detention*

232. Medical care for the inmates of penal institutions is provided under a State programme and includes a package of measures designed to keep inmates in good health. Under the programme, temporary detainees and convicts are provided the following kinds of medical

attention: in-patient and out-patient care; treatment of tuberculosis (under a Ministry-level programme to combat tuberculosis); anti-epidemic and preventive care; and medical check-ups to determine whether they are fit for work.

233. The figures given below will be of some assistance in judging how effective the medical care system at penitentiary institutions is. The period covered is that since the submission of the initial report.

234. Outpatient consultations in 1996 totalled 28,172 (for a total detainee population of 10,066); 35,249 in 1997 (10,252 prisoners); 49,318 in 1999 (8,589 prisoners) and 16,321 in the first quarter of 2000 (8,956 prisoners).

235. The number of individuals receiving medical assistance of various kinds at a care facility for detainees and convicts has been increasing every year. In 1996, 1,150 inmates were admitted to hospital and 1,134 were released. The corresponding figures for 1997 were 1,167 and 1,075; for 1998, 1,621 and 1,567; for 1999, 1,523 and 1,480; and for the year 2000 (first quarter), 300 and 265. Over the same period the number of surgical interventions has risen. Overall, 1,106 operations of various kinds were performed between 1996 and 2000.

236. Since 1998, the illness-related mortality indicator for all categories of detainees has shown a steady downward trend. A total of 78 individuals died in detention (0.8 per cent of all detainees) in 1996; 92 (0.9 per cent) died in 1997; 85 (0.8 per cent) died in1998; 54 (0.6 per cent) died in 1999; and 12 (0.11 per cent) died in the first quarter of the year 2000.

237. Between 1996 and 2000 a total of 103 convicts were exempted from further service of sentence on grounds of serious illness.

238. The main problem with the health-care system at penitential institutions is the shortage of medical supplies and corresponding diagnostic and medical equipment brought about by inadequate financing. Despite appreciable assistance from the International Committee of the Red Cross system, medical personnel encounter serious difficulties in their daily work.

**Article 11**

239. Article 18 of the Constitution proclaims that the freedom of a person is inviolable. Arrest or other restrictions on personal freedoms are prohibited without a court order. Breaches of the article are punishable under the law.

240. Nothing in Georgian legislation directly permits anybody to be deprived of liberty solely for being unable to fulfil a contractual obligation. Deprivation of liberty under the Georgian legal system can only come about in consequence of a breach of the criminal law.

241. Some current Georgian legislation does, however, give rise to doubt as regards article 11. Article 198 of the Code of Civil Procedure, for example, makes provision for the "securing from the respondent of a signed undertaking not to travel away from his home or residence" (para. 2 (e)) as one means of enforcing a civil claim. Paragraph 3 of the same article makes

provision for the courts to apply other measures where necessary to enforce a claim. It is our belief that the use in civil law of a signed undertaking not to travel (analogous to one of the preventive measures available in criminal proceedings) does indeed restrict individual liberty and can hardly be considered acceptable in the light of the requirements of article 11 of the Covenant.

242. Under the Business and Bankruptcy Proceedings Act, judicial investigations into such matters must be conducted in accordance with the legislative requirements governing civil procedure. At the same time, article 14 of the Act states that the courts are entitled to apply to an insolvent debtor such exceptional measures as enforced appearance before the authorities or in court and confinement in custody "as laid down in procedural legislation", or detention for the purpose of obtaining a written assurance. This provision appears to diverge somewhat from the meaning of article 11 of the Covenant. Besides, detention and, a fortiori, confinement in custody are coercive measures available exclusively under criminal procedure and unacceptable when applied to an individual who has committed no criminal offence.

**Article 12**

*Right to liberty of movement and freedom to choose one's residence within the State*

243. Article 22, paragraph 1, of the Constitution states that every individual lawfully within the territory of Georgia is free to move within that territory and is free to choose his or her place of residence. Restriction of this right is permissible only in accordance with the law, in order to guarantee State and public security as necessary for a democratic society, public health, prevention of crime and fulfilment of justice (ibid., para. 3). The Constitution does contain the caveat that these rights may be restricted during a state of emergency or martial law (art. 46, para. 1).

244. The practical application of this constitutional right is governed by the Citizens and Resident Aliens (Procedure for Registration and Establishment of Identity) Act passed in June 1996. The registration procedure that this lays down, like the rules governing the establishment of identity, are fundamentally different from the former Soviet internal passport regime that in effect restricted the right to free choice of one's place of residence.

245. According to the Act, the objective of registering Georgian citizens and permanently resident aliens (including stateless persons) is to establish information about them and to give effect to their rights and obligations. The fact that they are or are not registered may not serve as grounds for restrictions on the constitutional rights and freedoms of either Georgian citizens or aliens, nor as a condition for the exercise of those rights and freedoms save in the instances provided for in the legislation governing elections (art. 2, paras. 1 and 3).

246. Citizens of Georgia and permanently resident aliens are required to register at their places of residence, which they may choose for themselves. Individuals under 16, or in guardianship or care, are registered with their parents, guardians, custodians or other legal representatives. They may be registered independently only with the written consent of their parents, guardians etc. (art. 3, paras. 1-3).

247. If people change their place of residence for more than three months, they must within 10 days notify the appropriate state authorities at the new location, and those authorities will complete their registration within 5 days. This stipulation does not apply to individuals in preventive detention, serving criminal sentences or on official business (article 4, paras 1 and 3).

248. A person with no place of residence will be registered without any indication of address in the locality where he or she is. In all cases registration takes place on the basis of a duly issued attestation of identity or (for aliens) residence permit (art. 5, paras. 1 and 2).

249. Under the Aliens (Legal Status) Act, aliens enjoy freedom of movement within Georgia and freedom to select their place of residence under the procedure laid down in legislation. Their movements and choice of residence may be restricted only when this is necessary in the interests of State security, public order, public health, or the rights and legitimate interests of Georgian citizens and other persons (art. 18).

250. The Georgian Criminal Code prescribes punishment in the form of a fine, garnishment of wages for up to six months or imprisonment for up to one year for hindering a person legally present in Georgia from moving freely about the territory, freely selecting a place of residence, freely leaving the country or, in the case of a Georgian citizen, freely entering it. When accompanied by the threat or use of force or performed by taking advantage of one's official position, such action may be punished by imprisonment of up to two years, a fine, or garnishment of wages for up to one year, plus disbarment from office for up to three years (art. 142, paras. 1 and 2).

251. According to information from the Ministry of Justice, 350 adult aliens acquired immigrant status in 1998-1999. A total of 205 people acquired permanent resident status.

252. Over the same period, 25 people applied to the Ministry of Refugees and Resettlement for refugee status. Eight were from Pakistan, three from Iraq, two each from Nigeria, Iran, Sudan, Jordan, Azerbaijan and Afghanistan, and one each from Ukraine and Turkey. The applications from 22 of them were rejected since they did not fall within the scope of the Refugees Act. Between September and December 1999 a large group of people entered Georgia from Chechnya on account of military action in the south of the Russian Federation. Over 5,000 of them have been granted refugee status.

253. According to Ministry of Internal Affairs figures, 547 residence permits were issued in 1998-1999 to citizens of foreign States, and 249 to stateless persons.

*Right to leave any country, including one's own, and to return to one's country*

254. This right is set out in article 22, paragraph 2, of the Constitution, which states: "Everyone lawfully within the territory of Georgia is free to leave the country. A citizen of Georgia can freely enter the country". As in the case of liberty of movement and freedom to choose one's residence, this right is not absolute and may be restricted as provided by law in the event of a state of emergency or martial law, as indicated in article 46, paragraph 1, of the

Constitution. The fundamental law prohibits the expulsion of Georgian citizens from Georgia and extradition of a Georgian citizen to another State save in the instances provided for in international agreements. The decision to extradite a Georgian citizen may be appealed before the courts (art. 13, paras. 3 and 4).

255. Fulfilment of these constitutional guarantees is ensured by a series of pieces of legislation: the Citizens (Temporary Departure from and Entry into Georgia) Act, the Emigration Act, the Aliens (Legal Status) Act, the Aliens (Temporary Entry into, Sojourn within and Departure from Georgia) Act and the Migrants Inspection Act.

256. Under the Citizens (Temporary Departure from and Entry into Georgia) Act, citizens may temporarily leave and enter Georgia on passports issued by Ministry of Internal Affairs authorities, or equivalent documents (art. 5). Any legally competent adult citizen may apply for a temporary exit passport; for this purpose he or she must present proof of identity as a Georgian citizen and pay the State fee (art. 7). Articles 7 and 8 of the Act also govern the departure from the country of minor children accompanied by adults, and of unaccompanied minors and legally incompetent individuals.

257. The following may serve as grounds for restricting a Georgian citizen's temporary departure from the country:

- Criminal proceedings have been instituted against him or her;
- He or she has not served out a punishment ordered by the courts;
- Civil proceedings have been brought against him or her;
- He or she has not complied with obligations imposed by court decision;
- He or she has submitted forged or invalid papers;
- Other circumstances provided for in Georgian legislation (art. 10).

258. When departing temporarily from Georgia, citizens must hold visas for the country of their immediate destination. Under international agreements to which Georgia is a party, temporary departure from the country is also possible without a visa (art. 15). A citizen of Georgia may return to the country at any time; no authorization is required for this (art. 16).

259. The Act also permits restrictions on citizens' rights temporarily to leave Georgia for another country in the interests of their security, if the country of destination is in a state of emergency (art. 17), and specifies a procedure for the departure from Georgia of members of the armed forces (art. 18). Nothing in the Act is discriminatory within the meaning of the Covenant.

260. Under the Migrants Inspection Act, all migrants entering and leaving Georgia (including Georgian citizens and aliens permanently resident in the country) must fill in and keep about their person a migrant card. The purpose of this is to be able to monitor and direct immigration and emigration, keep track of and register migrants, and identify illegal migration. The procedure for the issuance of migrant cards is laid down by the Ministry of Refugees and Resettlement.

261. Three kinds of passport for foreign travel are available in Georgia: passports for ordinary citizens, issued by the Ministry of Internal Affairs, and diplomatic and service passports issued by the Ministry of Foreign Affairs. Ordinary passports are issued upon payment of the State fee. Diplomatic and service passports are issued to specified categories of officials without a fee. The issuance of these passports is governed by special regulations issued pursuant to the Executive Branch (Structure and Operation) Act.

262. The fee for an ordinary passport is 35 lari. Under the State Fees Act, category I and II invalids travelling abroad for treatment, veterans of the Second World War and people disabled in fighting for the independence and territorial integrity of Georgia are exempted from payment. Veterans of the armed forces and forcibly displaced persons receive a 50 per cent discount. Aliens permanently resident in Georgia are exempted from payment when this is so stipulated in international agreements to which Georgia is a party.

263. Figures on the applications for ordinary passports for foreign travel submitted between 1996 and 2000, and on applications rejected, are given below.

264. In 1996, the internal affairs authorities received 103,135 applications for passports; 103,113 were granted, and 22 were rejected. In 1997, applicants totalled 90,480; 90,467 were issued passports and 13 were refused. In 1998, 81,644 applications were received; 81,624 were granted and 20 were refused. In 1999, the number of people wishing to obtain a passport was 123,483, and of them 123,465 were given a passport and 18 were refused. In the first quarter of 2000, applications were received from 31,441 people and only 4 were refused.

265. In all instances, the refusal to issue a passport was based on the discovery, during the processing of the applications, of circumstances provided for under article 10 of the Citizens (Temporary Departure from and Entry into Georgia) Act (see paragraph 257 above).

266. Aliens departing Georgia must present a valid foreign passport or equivalent documents and their migrant card. Aliens permanently resident in Georgia must, on leaving the country, submit to the competent authorities a valid foreign passport or equivalent document for an exit visa or permission to leave Georgia, plus their migrant card.

267. A foreign citizen may be refused permission to leave Georgia:

- If his or her departure is contrary to the interests of State security, until this ceases to be the case;

- If he or she is suspected or accused of a crime, until proceedings on the case have been completed;

- If he or she is convicted of a crime, until he or she has served or been released from serving sentence;

- In other instances provided for in Georgian legislation.

A foreign citizen's (stateless person's) departure from Georgia may be deferred until he or she has discharged obligations under civil law. Aliens are permitted 10 days' grace to lodge a judicial appeal against refusal of permission to leave Georgia (Aliens (Legal Status) Act, arts. 24 and 26).

268. The question of penal sanctions for hindering free departure from Georgia and, in the case of Georgian citizens, free return to the country has been covered in the previous section of this report (para. 250).

**Article 13**

*Meaning of the term "alien" under Georgian legislation*

269. While the Constitution of Georgia establishes the rights of aliens (arts. 47 and 27), it offers no definition of the notion of an "alien". This matter is dealt with under the Aliens (Legal Status) Act, article 1 of which states that:

- Persons who are not Georgian citizens and possess papers confirming their citizenship of another State (citizens of foreign States); and

- Stateless persons possessing papers confirming their permanent residence in another State (stateless persons permanently resident in another State)

are deemed to be aliens in Georgia. Hence stateless persons with no permanent residence in another State are not, under Georgian legislation, regarded as aliens.

*Grounds and procedure for the expulsion of aliens*

270. The Constitution of Georgia does not deal with the expulsion of aliens. Under the Aliens (Legal Status) Act, foreign citizens and stateless persons temporarily on Georgian territory may be expelled:

- If there are no grounds for their continued presence in Georgia;

- If they have entered and are present within Georgia illegally;

- If their presence in Georgia is contrary to the interests of State security and public order;

- If necessary to protect the health or uphold the rights and legitimate interests of Georgian citizens and other persons in Georgia;

- If they have deliberately and systematically broken Georgian law;

- In other circumstances provided for under Georgian legislation (art. 29).

271. The decision to expel a person from Georgia is taken by the Minister of Justice on the strength of a submission from the internal affairs authorities, the Procurator's Office, a court or the Ministry of Foreign Affairs.

272. Foreign citizens and stateless persons temporarily within Georgia must, upon being served with an expulsion order in a language which they understand, leave the country within the period specified in that order. If they refuse to do so or fail to leave the country for other than compelling reasons within the period specified, they are subject to forcible expulsion. Orders for the expulsion of aliens from Georgia may be appealed before the courts.

273. These provisions are applicable to people regarded as aliens within the meaning of the Aliens (Legal Status) Act, i.e. people not permanently resident in Georgia.

274. Special rules governing expulsion are laid down in the Immigration Act, which encompasses the category of immigrants, i.e. aliens who have obtained the right to permanent residence in Georgia (art. 3). Under article 7 of the Act, an immigrant may be expelled if:

(i) It transpires that he or she obtained authorization to reside in Georgia by submitting forged or out-of-date papers;

(ii) He or she has committed a serious criminal offence;

(iii) He or she deliberately and systematically breaks Georgian law or adversely influences public morals;

(iv) His or her presence in Georgia is contrary to the interests of State security;

(v) In other circumstances provided for by legislation.

275. The decision to expel an immigrant from Georgia is taken by the Minister of Justice on the strength of a submission from the Ministries of Internal Affairs, Health and Welfare or Foreign Affairs, the State Procurator's Office, the judiciary or the Ministry of State Security, as appropriate.

276. In the instances covered by article 7 of the Immigration Act, subparagraphs (i), (iii) and (iv) of the first paragraph, the decision to expel an immigrant from Georgia is communicated to the immigrant in writing within 10 days of its adoption, and the immigrant then has 30 days

to leave Georgian territory. The immigrant is allowed 10 days to appeal the decision before the courts. If he or she does so, the 30-day grace period is suspended and resumed when the judicial decision becomes enforceable. The individuals covered by subparagraph (ii) of this paragraph are required to leave Georgian territory within 30 days of completing their sentences.

277. The decision to expel an immigrant from Georgia does not extend to members of his or her family.

278. Article 8 of the Immigration Act provides for the forcible expulsion of an immigrant from Georgia if he or she does not comply with the requirement to leave the country within the period specified in article 7 of the Act.

279. Under article 24 of the Aliens (Temporary Entry into, Sojourn within and Departure from Georgia) Act, aliens may be expelled from the country pursuant to article 29 of the Aliens (Legal Status) Act or for breaking the rules governing transit through Georgian territory.

280. In March 2000 the President of Georgia issued Decree No. 111, approving regulations establishing a temporary procedure for the expulsion of aliens from Georgia. The regulations specify the conditions under which aliens may be expelled pursuant to the Immigration Act, the Aliens (Legal Status) Act and current legislation.

281. The regulations repeat the grounds for the expulsion of aliens set forth in article 29 of the Aliens (Legal Status) Act. They give a list of ministries and governmental departments (the ministries of the interior, State security, justice, refugees and resettlement and income tax, and the State Border Defence Department) that are required, if the above grounds are found to exist, to consider within a period of three days whether or not to expel the alien concerned and submit their conclusions to the Minister of Justice, who is empowered to take the final decision.

282. The Minister of Justice must within a three-day period consider the material submitted and to take one of the following decisions:

- To expel the alien from Georgia;
- Not to expel the alien from Georgia;
- If the material submitted is inadequate, to refer it back to the appropriate authority.

283. An order from the Minister of Justice to expel an alien is transmitted to the Ministry of Internal Affairs and the State Border Defence Department. The Ministry of Internal Affairs, in turn, sends a copy of the order to the individual subject to expulsion.

284. An order from the Minister of Justice to expel an alien must be brought to the attention of the Ministry of Foreign Affairs within 24 hours. During the 24 hours following receipt of the order, the appropriate Ministry of the Interior service or official must notify the alien concerned, in a language he or she understands, of the expulsion order, explain his or her rights and obligations and invite him or her to leave Georgian territory voluntarily within three days.

285. Transport organizations and their representatives are required to afford an alien subject to expulsion every assistance in leaving the country as quickly as possible. If the alien declines to leave the country voluntarily within three days, the expulsion order is immediately put into effect by the Ministry of Internal Affairs.

286. An alien may be expelled from Georgia:

- To the country of which he or she is a citizen or permanent resident;
- To the country from which he or she entered Georgia;
- To any country prepared to accept him or her.

Wherever possible, the Ministry of the Interior will notify any one of the above countries of the decision to expel the alien from Georgia.

287. The regulations establishing a temporary procedure for the expulsion of aliens from Georgia especially stipulate that the procedure for appealing against an expulsion order is defined by the legislation in force.

*Prohibition of mass expulsions of aliens*

288. Georgian legislation does not provide for the collective expulsion of aliens and does not even use the term "collective expulsion". All legislation governing the expulsion of aliens provides for cases to be considered individually and decisions on expulsion to be taken on an individual basis.

*Practical aspects*

289. According to information from the Ministry of Justice, not a single case of an alien being expelled from Georgia was recorded between 1996 and 2000.

*Extradition and refoulement of aliens*

290. Extradition is governed by the Code of Criminal Procedure. Detailed information on the relevant sections of the law can be found in the second periodic report of Georgia under the Convention against Torture (paras. 34-37, 39, 63-68).

291. According to figures from the State Prosecutor's Office, 31 applications from eight separate countries for the extradition of their citizens were entertained between 1996 and 2000. A total of 18 applications were granted. In keeping with article 256 of the Code of Criminal Procedure, extradition in all these cases took place pursuant to a bilateral agreement on reciprocal legal assistance between Georgia and the country concerned.

**Article 14**

*Equality before the courts*

292. Article 42 of the Constitution states:

> "1. Every individual has the right to appeal to the courts for protection of his or her rights and freedoms.
>
> "[...]
>
> "9. Any individual who suffers damage through the illegal actions of State bodies, elected authorities or their employees is guaranteed full compensation from State resources through the courts."

This is one of a list of constitutional provisions that are not subject to restriction in any circumstances.

293. Under the General Courts Act, "every individual has the right to apply directly to the courts, personally or through representatives, for protection of his or her rights and freedoms" (art. 3, para. 1) and "justice shall be administered on the basis of equality before the law and the courts of all parties to a suit; legal proceedings shall be conducted on the basis of equality of rights of the parties, and adversarially" (art. 6, paras. 1 and 2). The Supreme Court in Georgia is the highest court and final instance for the administration of justice throughout the country, and exercises its jurisdiction on the principles of equality of the parties and adversarial proceedings (Supreme Court of Georgia Act, art. 2).

294. Under the Constitutional Court of Georgia (Establishment) Act, individuals in Georgia and other States are, if they consider that rights and freedoms recognized under chapter II of the Georgian Constitution have been violated, empowered to lodge with the Constitutional Court a challenge to the constitutionality of the regulatory instruments or parts thereof that conflict with the said chapter II (art. 39, para. 1).

295. The Code of Civil Procedure states that:

- Any individual's rights may be defended through the courts. A court shall take up a case upon application from an individual seeking protection of his or her rights or lawful interests (art. 2, para. 1);
- Justice in civil cases shall be administered by the courts alone, on the premise that all are equal before the law and the courts (art. 5).

296. Article 9, paragraph 1, of the Code of Criminal Procedure emphasizes that all are equal before the law and the courts irrespective of race, nationality, language, sex, social origins, property and occupation, place of residence, attitude towards religion, creed or other circumstances. Proceedings in criminal cases in all courts are open to the public (ibid., art. 16, para. 1).

*Right to a fair trial*

297. The foundations of the court system are laid down in chapter V of the Constitution, on the judiciary. Under article 82, the judiciary is independent and its power is exercised only by the courts, through constitutional supervision, the administration of justice and other forms determined by law. Article 83 lays down that justice is to be administered by the general courts. The general court system and manner of judicial proceedings are laid down by law. Legal proceedings are conducted on the basis of equality of rights of the parties, and adversarially (art. 85). Court decisions may be set aside, amended or suspended only by a court under the procedure laid down by law (art. 84).

298. The functioning of the judiciary in Georgia and the conduct of judicial proceedings are governed by the acts establishing the general courts, the Supreme Court and the Constitutional Court, and the codes of penal, civil and administrative procedure.

299. Pursuant to the General Courts Act, the court system in Georgia operates on three levels. District (municipal) and circuit courts are courts of first instance. The Court of Appeal is the court of second instance; the supreme courts in Abkhazia and the Ajar Autonomous Republic and the appellate courts in Tbilisi and Kutaisi have the jurisdiction of courts of appeal. They consider on appeal decisions by the district (municipal) and circuit courts. The Supreme Court oversees legal proceedings in the general courts and serves as the court of first instance in a category of cases laid down by law; it exercises the powers laid down in the Constitution for the purpose of initiating impeachment proceedings and appointing three (of nine) members of the Constitutional Court. As laid down in the Supreme Court of Georgia Act, the Supreme Court is the highest court and final instance for the administration of justice throughout Georgia.

300. There is only one general court system in Georgia. The creation of military courts is permitted only in wartime, and only within the general court system. The establishment of emergency or ad hoc courts is prohibited.

301. Cases in district (municipal) courts are heard by judges sitting singly; at circuit courts they are heard by three-member benches in the instances laid down in procedural legislation. Circuit courts have civil and criminal divisions for this purpose. Appellate courts have divisions for civil, administrative, taxation and other cases. Again, three judges participate in appellate proceedings. Similar divisions and benches of judges operate in the supreme courts in Abkhazia and Ajara. The Supreme Court of Georgia has a criminal division and chambers for civil cases, cases relating to business activities and bankruptcy, administrative and other matters and for criminal cases, and also has a supervisory chamber. The criminal division considers in first instance a range of cases assigned to the jurisdiction of the Supreme Court by the Code of Criminal Procedure. The various chambers - the supervisory chamber apart - are courts of cassation hearing objections to decisions by the appellate courts. The supervisory chamber considers appeals lodged by either party in the light of fresh evidence. For the purpose of hearing cases, the Supreme Court sits as a three-member bench; the criminal division operates with one judge and between two and six deputies.

302. A twelve-member advisory body, the Justice Council, was set up in the Office of the President to draw up proposals for the judicial reform now taking place in Georgia, the selection and nomination of candidates for judgeships, the removal of judges from office, and the organization of qualifying examinations for would-be judges. Its membership includes the presidents of the Supreme Court and the supreme courts in Abkhazia and Ajara. Four members of the Council are appointed by the President of the country, one by the Supreme Court, and four by Parliament. The highest representative assemblies in the autonomous entities of Abkhazia and Ajara have also set up justice councils. The powers of the Georgian Justice Council include instituting disciplinary proceedings against a judge, if such a complaint is received, for unsatisfactory performance, or for failing to meet the deadlines established for the consideration of a case or the formulation and issuance of official legal documents. In all other cases disciplinary proceedings are handled by the next-higher judicial body. Disciplinary proceedings for a breach of the law occurring during the consideration of a case may be brought only during the consideration of that particular case or if a complaint is lodged. The merits of disciplinary cases are considered and ruled upon by the Georgian judges' disciplinary board.

303. Both criminal and civil procedural law uphold the principle that the courts must consider and rule on all the points, but those points only, that are raised in a case; the aim of this is to ensure that the parties can exercise their substantive and procedural law rights freely. The Code of Criminal Procedure expressly stipulates that its effects extend to citizens of foreign States and stateless persons within Georgia (art. 5) other than those who enjoy diplomatic privileges and immunities, to whom the procedural actions it calls for will apply only at their request or with their consent.

*Courts*

304. As laid down in article 84 of the Constitution, the courts in Georgia are independent in their functions and subordinate only to the Constitution and the law. Any attempt to influence the courts or interfere in their activities with a view to affecting their decisions is prohibited and punishable by law. Judges can be taken off a case, removed from office before their terms of office expire or transferred to other duties only in the instances defined by law. No one is entitled to call a judge to account over a particular case. Any official ruling or document that restricts the independence of the courts is null and void.

305. The Constitution lays down strict criteria for would-be judges. Article 86 states that a citizen of Georgia who has attained the age of 30 and has a university-level legal education and not less than five years' experience in the legal field may become a judge.

306. Under the General Courts Act (art. 46), passing a qualifying examination is one of the requirements for would-be judges. The subjects examined include international human rights treaties and agreements to which Georgia is a party (art. 68).

307. The Constitution also stipulates that judges shall be appointed or elected to office for terms of not less than 10 years (art. 86, para. 2), guarantees their inviolability and provides for the security of both judges and their families.

308. In accordance with the General Courts Act, Supreme Court judges are elected by the Georgian Parliament upon submission from the President. Judges of the district (municipal), circuit and appellate courts are appointed by the President upon submission from the Justice Council. Judges of the supreme courts in the Abkhaz and Ajar autonomous republics are elected by the highest representative assemblies of Abkhazia and Ajara on the basis of submissions from their respective justice councils, with the prior written consent of the President of Georgia (art. 48, paras. 1, 2 and 4). The term of office for all judges in Georgia is set at 10 years (art. 49).

309. The General Courts Act gives an exhaustive list of the grounds on which a judge may be removed from office. These are:

- Own request;
- Failure to perform his or her functions for more than six months in succession;
- Deliberate or systematic violation of the law in the administration of justice;
- Commission of an act undermining the authority of the courts and unworthy of a judge;
- Systematic unsatisfactory performance;
- Involvement in an occupation or activity deemed by law to be incompatible with the status of a judge;
- Determination by a court to be legally incapable or of diminished legal capacity;
- Loss of Georgian citizenship;
- Existence of an enforceable criminal sentence against him or her;
- Attainment of the maximum age established by law (art. 54).

310. The Act also lays down the grounds for, procedure governing and types of disciplinary proceedings to which judges are liable (arts. 56, 58 and 59).

*Public deliberations*

311. As required by the Constitution, court deliberations are open to the public. Hearings in camera are permitted only in the instances provided for by law. Court decisions are announced publicly (art. 85, para. 1).

312. Under the General Courts Act, court deliberations in all cases are open to the public. Hearings in camera are permitted only in the instances provided for by law. In all cases, the

courts' decisions are announced publicly. Filming and photography and the making of audio and video recordings of judicial sessions may be prohibited only by a reasoned decision of the court (art. 12). The first three sentences of this article thus repeat the provisions of the Constitution.

313. The Code of Criminal Procedure also proclaims that the deliberations on criminal cases in all courts must be open to the public. Further to the wording in the General Courts Act governing prohibitions on the recording of judicial proceedings, the Code enshrines the right of the parties to the case and other individuals to take shorthand notes of the proceedings and use sound recording devices and other noiseless recording apparatus provided that they do not disrupt the court's deliberations (art. 16, paras. 1 and 2). Furthermore, under the Code, the progress and outcome of the proceedings may be freely reported on by the mass media, which must, however, be guided in their reporting by the presumption of innocence (art. 16, para. 3).

314. The Code of Criminal Procedure does make provision for cases where the courts are empowered not to admit the public to all or part of their deliberations. Under article 16, a criminal case may be held totally or partly in camera by decision (order) of the court (judge) in order to protect State secrets; cases involving offences perpetrated by minors under 16 are dealt with the same way, as are sexual offences, if the parties so request, in order to avoid divulging information about people's private lives. Up to two representatives of each accused and victim may be allowed into the courtroom for proceedings in camera (para. 4). Submissions (applications) from the investigating authorities for the disclosure of court orders and resolutions are also considered in camera (para. 5). In no case are persons under 16 allowed into the courtroom (para. 9).

315. At the same time, the Code of Criminal Procedure expressly stipulates that judgements, decisions and orders of a court must always be made public (art. 16, para. 7).

*Regard for the presumption of innocence*

316. As called for in article 14, paragraph 2, the presumption of innocence is upheld without qualification in article 40 of the Constitution, which states that a person is to be considered innocent until his or her guilt has been duly established in a court decision that has become enforceable (para. 1). No one is required to demonstrate his or her innocence. The burden of proof rests upon the prosecution (para. 2). Prosecutions, indictments and sentences must be founded solely on sound evidence. Any unconfirmed doubt must be construed in the accused's favour (para. 3).

317. There is an article in the Code of Criminal Procedure, article 16, entitled "Presumption of innocence"; the first paragraph echoes article 40, paragraph 1, of the Constitution. The second reproduces the wording of article 40, paragraph 2, adding that the prosecution has the right not to press its case. The third and fourth match verbatim the wording of article 40, paragraph 3, of the Constitution.

318. It may be seen from the above that special importance attaches to the presumption of innocence in Georgian criminal law.

*Language of proceedings*

319. Under the Constitution, judicial proceedings in Georgia are conducted in the State language. Anyone not proficient in the language of the proceedings is offered an interpreter. In areas where the population is not proficient in the State language, the Constitution guarantees that matters relating to the study of the State language and judicial proceedings will be dealt with (art. 85, para. 2).

320. Pursuant to the Code of Criminal Procedure, criminal proceedings in Georgia are conducted in Georgian; in Abkhazia, they are conducted in Georgian and Abkhaz. Parties to a case who are insufficiently proficient in the language of the proceedings are entitled to make statements, give testimony and explanations, make and withdraw applications, lodge protests and address the court in their native tongue or another language in which they are proficient. In such cases, and when acquainting themselves with the records of a case, the parties are entitled to the services of an interpreter. Documents relating to the investigation and the proceedings which must by law be given to the accused or other parties to the case must be translated into their native tongues or another language in which they are proficient. The entity handling the case must explain these rights to the parties. The services of interpreters assisting in criminal proceedings are paid for by the State (art. 17, paras. 1-5).

321. It should be noted that article 9 of the Code of Criminal Procedure ("Language of proceedings") reproduces the above Constitutional provisions.

*Right of the accused to be informed of the nature and cause of the charge against him or her*

322. The Code of Criminal Procedure states that a body of evidence sufficient to support a reasonable supposition that a crime has been committed by a specific person constitutes grounds for bringing charges (art. 281). Once it has been decided to bring charges against a person, the investigator or procurator has 48 hours in which to serve those charges; if the person charged should fail to present himself or herself at the appointed time, the charges must be served on him or her on the same day as that upon which he or she is forcibly brought before the investigator or in court (art. 283). The investigator or procurator must acquaint the individual summoned and his or her defence counsel with the decision to bring charges against him or her (art. 284, para. 1). Pursuant to article 282 of the Code, that decision must contain sufficient evidence to support a reasonable supposition that a crime has been committed by the individual concerned; a formal statement of the charge (description of the incriminating act together with an indication of the time and place where it occurred and other circumstances requiring to be demonstrated in the course of the case); and an indication of the article in the Code of Criminal Procedure stipulating the punishment for that particular offence.

323. The individual charged and his or her defence counsel must confirm in writing that they have been acquainted with the decision. At the same time the accused is given a list of his or her rights and obligations, while the investigator (procurator) must, with defence counsel present, explain what they entail. Besides defence counsel, a procurator is required to be in attendance when the accused is questioned after the charges are laid if persons not proficient in the language of the proceedings or minors are being questioned, and also in certain other circumstances governed by law (Code of Criminal Procedure, art. 284, paras. 1 and 3).

*Conduct of the defence in criminal proceedings*

324. The Constitution states that the right to a defence is guaranteed (art. 42, para. 3). This stipulation is elaborated in the Code of Criminal Procedure, which states that the courts and officials conducting judicial proceedings must ensure that suspects, accuseds and defendants have the right to a defence; must explain their rights to them; must provide them with the opportunity to defend themselves by all the means permitted by law; and must uphold their rights and freedoms. An individual facing proceedings for committal to compulsory medical care must be granted the right to a defence, as must both convicts and acquitted persons in the event of an appeal against their sentence or other final judicial decision. The fact that defence counsel or a legal representative is present during criminal proceedings does not deprive the defendant of his or her rights (art. 11, paras. 1-3).

325. Article 76 of the Code of Criminal Procedure states that an accused is entitled to defend himself or herself against a charge by all legal means and methods, and to have enough time and opportunity to prepare a defence (para. 1). Paragraph 2 of the same article stipulates that an accused shall have all the procedural rights of a suspect. An accused has, besides, a whole series of other rights detailed below. An exhaustive list of suspects' rights is given in article 73 of the Code. Here we will mention the following rights of a suspect (and hence of an accused): to give or not to give testimony; to make use of the services of defence counsel by agreement with the latter, against payment or, in the instances provided for by law, completely free of charge; to meet with counsel, no witnesses being present, for a maximum of one hour per day; to have, free of charge, the services of an interpreter (where the suspect does not know or has a poor command of the language of proceedings) at interrogations and other investigative procedures which he or she attends; to make and withdraw applications; to submit evidence; to attend investigative procedures conducted at his or her own or counsel's request; to lodge complaints with the procurator or the courts concerning the actions or decisions of the authorities or official conducting the initial inquiry, or of the investigator; and to be given an exhaustive explanation of his or her rights by the official conducting the initial inquiry or the investigator. Failure by a suspect (accused) to make use of his or her rights cannot be construed as an indication of guilt.

326. Further to these procedural rights, an accused is also entitled to acquaint himself or herself with all the incriminating evidence available in the case and to requisition evidence he or she needs to refute the charge or diminish his or her liability; to demand a face-to-face encounter with the persons alleging his or her involvement in a crime; upon completion of the pre-trial investigation, to acquaint himself or herself, alone or with defence counsel, with the entire case file, transcribe any necessary information from it, make copies, and submit requests for supplementary investigations, which must be entertained; to decline the services of counsel and defend himself or herself except in the instances provided for in the Code of Criminal Procedure; to attend when the case is committed for trial and during the judicial proceedings, and to exercise all the rights of a party to the case when so doing; to take part in the oral argument if no defence counsel is present; to appeal against sentence and other judicial decisions; to attend sessions of the courts at all levels and there defend his or her interests, in person or through defence counsel, etc.

327. Under article 406 of the Code of Criminal Procedure, it is prohibited to restrict the time taken to acquaint oneself with a criminal case, or to oblige parties to familiarize themselves with it in haste. If, however, a party is wilfully dilatory in studying the case the investigator is entitled, with the procurator's approval, to issue an order setting out reasonable and adequate time limits for the purpose. This order may be appealed before the courts. Parties may be allowed not less than six nor more than eight hours in a day to acquaint themselves with a case. The time an accused and his or her counsel spend acquainting themselves with the case does not count towards the maximum period laid down by law for the detention of an accused in custody.

328. The participation of defence counsel in criminal proceedings and provision by counsel to suspects and accuseds of the legal assistance stipulated in law are governed by articles 78-84 of the Code of Criminal Procedure. Under the Code, not only legally qualified lawyers but also other individuals invited by the suspect or accused are permitted to serve as defence counsel. The body conducting the case is not entitled to restrict the suspect's (accused's) choice of counsel (art. 78, paras. 2 and 3). By leave of the Minister of Justice, foreign lawyers may serve as defence counsel (art. 78, para. 8). The defence of a suspect or accused may be conducted under contract by a lawyer, or with the assistance of a designated lawyer (arts. 79 and 80). The Code sets out a full list of circumstances in which the body conducting a case is required to designate a lawyer as defence counsel for a suspect or accused with the latter's consent (art. 80, para. 1). In certain circumstances, the body conducting the case is entitled to disregard a suspect's or accused's refusal of defence counsel (art. 81). As far as accused persons are concerned, such circumstances arise when they face a charge punishable by life imprisonment, or when two or more accuseds have conflicting interests and at least one of them is represented by defence counsel. Defence undertaken by designation is paid for by the State.

329. Defence is undertaken by designation only when a suspect or accused does not retain counsel on contract. An individual's demand to change counsel and appoint another must be complied with throughout the course of proceedings (art. 80, para. 6).

330. Regarding the opportunities for contact between counsel and his or her client, see above (para. 325).

*Right to trial without unreasonable delay*

331. The matters arising in the context of this section of article 14 are dealt with in the corresponding articles of the Code of Criminal Procedure. The provisions cited below will therefore be accompanied only by the number of the appropriate article of the Code, without further commentary.

332. Upon the conclusion of an investigation the investigator shall notify the parties, including the accused, in writing and explain to them their right to acquaint themselves with the entire case file (art. 401). A separate record shall be drawn up and signed by the investigator and the party concerned as each party acquaints himself or herself with the case (art. 408). Thereafter the investigator shall draw up the indictment and send it forthwith, together with the criminal case file, to the procurator (arts. 409 and 411). The procurator must consider the case within

five days of receiving it and, if there are grounds for referring it to trial, endorse the indictment (art. 413). The criminal case file and appended indictment shall be forwarded to the court within 48 hours of such endorsement (art. 416).

333. The judge considering an incoming case file shall officially accept it for processing, but not earlier than 24 nor later than 72 hours after handing down the final decision on the most recent case to have come before him or her (art. 419). In courts at any level, the judge must consider a criminal case file forwarded by the procurator within seven days of its arrival. If the file is complex or voluminous, the president of the Supreme Court or court of appeal of which the investigating judge is a member shall be entitled to extend the deadline for consideration (of cases falling within their respective jurisdictions) to 14 days. Extension of the seven-day deadline in respect of cases triable by district (municipal) courts is not permitted. The judge shall, not later than three days after the relevant deadline, determine, in accordance with the grounds laid down in the Code, what further action should be taken on the case (arts. 420, 421, 423, 424).

334. On concluding that there are sufficient grounds for a trial the judge shall issue a committal order and schedule a trial, which must commence within 20 days of the date on which the accused is committed for trial (art. 426). The committal order, together with the criminal case file, shall be forwarded to the competent court of first instance not later than three days after its issuance (art. 432). The trial shall run continuously apart from such time as is required for rest (art. 441).

335. The following constitute grounds for postponement of a trial:

- Non-appearance of the accused, except in the instances provided for in the Code of Criminal Procedure (art. 443, para. 2); this is defined in article 444, paragraph 1;

- Non-appearance of defence counsel; this is covered by article 445, paragraph 2.

The trial may also be adjourned if it is necessary to obtain fresh evidence or if any of the parties summoned fails to appear. The court shall determine the length of time for which the trial is to be adjourned (art. 451, para. 1).

336. The Code of Criminal Procedure sets no time limits for the consideration of criminal cases in first instance.

337. Under the Code, defendants, victims, civil plaintiffs and respondents have the right to demand consideration of a case by at least two judicial bodies, the court of first instance and a court of appeal or, where the law so provides, of cassation (art. 517).

338. Parties may lodge an appeal at the court of first instance up to 14 days after the latter pronounces sentence. If the defendant is in custody, the deadline for appealing is reckoned from the date on which he or she is handed a copy of the sentence (art. 523). The case file, appeal and

objections thereto (if any) must be forwarded from the court of first instance to the court of appeal within one month of sentence being handed down. The case must be considered by the court of appeal within 14 days of receipt. If the file is complex or voluminous, the president of the court of appeal may extend this deadline by seven days (art. 528).

339. The premises and deadlines for lodging an appeal in cassation, and the deadlines for the consideration of cases in cassation proceedings, are the same as for ordinary appeals (arts. 546, 550 and 556). Appeals for judicial review are admissible in respect of enforceable judgements handed down by the criminal division of the Supreme Court sitting as a court of first instance if no appeal in cassation has been lodged (art. 575). No time limits are imposed on applications for judicial review of judgements to alleviate a convict's situation. Appeal on grounds tending to aggravate the situation of a convicted (or acquitted) person is permitted within one year of the judgement becoming enforceable (art. 577).

340. The consideration of applications for judicial review takes place in the Supervisory Chamber of the Supreme Court (art. 576). Within a month of the arrival of an application, the Chamber must take one of the following decisions:

- To reject the application; this decision is final;

- To request the Plenum of the Supreme Court to reconsider the decision whose review is sought.

In the latter case, the president of the Chamber must submit a petition to that effect, together with the case file, to the Plenum within 10 days (art. 581). The case must be considered at the next meeting of the Plenum, but not earlier than one month after the submission of the petition (art. 582, para. 2).

*Presence at trial of the defendant and defence counsel*

341. Pursuant to article 443 of the Code of Criminal Procedure, trials in criminal cases take place in the presence of the defendant, whose appearance in court is mandatory. A trial may be permitted to proceed in the absence of the defendant only when:

- The defendant is outside Georgia and declines to appear in court;

- The defendant, facing a penalty of up to three years' deprivation of liberty, asks for the case to be considered in his or her absence and the court is of the opinion that trial in the absence of the defendant will not impede the thorough, complete and objective investigation of the circumstances of the case.

When the defendant is absent, attendance at the trial by his or her defence counsel is mandatory.

342. Attendance at trials by defence counsel is regulated by article 445 of the Code of Criminal Procedure, under which a lawyer attends the trial and has the same rights as the prosecutor, based on the principle of adversarial proceedings in criminal cases. Replacement of defence counsel who has not put in an appearance at a judicial session is permissible with the

consent of the defendant. If counsel retained by the defendant cannot attend for an extended period (over seven days), the court shall adjourn the trial and invite the defendant to select other counsel, or shall designate fresh counsel. It shall allow the new counsel enough time to study the case file, and afford him or her the opportunity to repeat judicial action taken before he or she was put on the case.

343. The provisions cited earlier in this report concerning the conduct of suspects' or accuseds' defence by lawyers under contract or by designation also apply to defendants. The procedure governing participation by counsel in appeal, cassation and judicial review proceedings is identical to that laid down for trial in the court of first instance (Code of Criminal Procedure, arts. 531, 558, 584 and 585).

*Examination of witnesses*

344. Under the Code of Criminal Procedure, any party to a criminal case is entitled to petition for procedural actions or decisions to be taken in his or her own interests or the interests of someone whom he or she represents (is defending). The petition is handed to the official or body investigating or handling the case. It may be submitted at any stage of the proceedings. It must ordinarily be granted if doing so will further the thorough, complete and objective determination of the circumstances of the case. Petitions from the prosecution and the defence must be accorded equal attention. Warranted petitions from a suspect, accused, defendant or defence counsel for judicial or investigative action to be taken must be granted (arts. 230-232).

345. One kind of petition is a request for a witness to be called and examined. At the preliminary inquiry and pre-trial investigation stage, witnesses are examined without the suspect or accused present. They may, however, only be questioned about circumstances of relevance to the case or to establish the character of the suspect, accused or victim (art. 305). At the same time the Code of Criminal Procedure establishes that it is an accused's right to demand a face-to-face encounter with persons, including witnesses, implicating him or her in a crime (arts. 76 and 314, para. 2).

346. The calling and examination of witnesses during the trial itself are regulated by the Code of Criminal Procedure as follows:

- During a preparatory meeting the judge handling the trial (presiding) will ask the prosecuting and defending parties whether they intend to petition for witnesses to be called. The court must consider each petition submitted and ascertain the views of the parties to the case. If it denies a petition, it must hand down a reasoned decision. The person whose petition is denied is entitled to submit it during the course of the judicial investigation (art. 468);

- A witness called in response to a petition from one of the parties shall initially be examined by the petitioner, then by other persons representing the petitioner's side, and lastly by persons representing the other side and the court. Thereafter, the witness shall be questioned by the person who called him or her. A witness called at the motion of the court shall first be examined by the court, then by the defence, and lastly by the prosecution (art. 479).

*Right to the services of an interpreter*

347. See the section on "language of proceedings" in the commentary to article 14, above.

*Right not to testify against oneself*

348. The Constitution states that no one shall be obliged to testify against himself or herself or near relations, the range of whom is defined by law (art. 42, para. 8).

349. Under the Code of Criminal Procedure, testimony may be obtained as evidence in criminal proceedings only voluntarily. The use of physical or psychological duress, subterfuge, promises or admonitions to secure testimony is forbidden. Evidence obtained by such means is inadmissible (art. 19). Any evidence obtained in breach of the procedure laid down by law through the use of force, threats, blackmail or bullying shall be declared inadmissible and removed from the case file (art. 111).

350. The Code of Criminal Procedure expressly stipulates that both suspects and accuseds are entitled but not obliged to give testimony (arts. 114, 115). Refusal to testify may not be construed as an indication of guilt (art. 115, para. 3). It must also be pointed out that an admission by the accused uncorroborated by other evidence does not suffice for a finding of guilty. Conviction and sentencing by a court may be grounded only in an assemblage of mutually consistent evidence (art. 19, para. 3 and art. 115, para. 4).

351. In relation to the questioning of a defendant during judicial proceedings the operative rule is that the defendant is entitled not to give testimony, and refusal to testify may not be construed to his or her disadvantage (art. 476).

*Criminal proceedings involving minors*

352. Under the Criminal Code (art. 80), in matters of criminal liability individuals under the age of 18 when they commit an offence are to be regarded as minors. Besides this, blame for illegal actions covered by the Code cannot be imputed to individuals who, when they perform such actions, are under the age of 14 (art. 33).

353. Where proceedings relate to an offence committed by a person under 18, legal representatives of the suspect or accused are permitted to attend from the moment of the initial interrogation. The official conducting the initial inquiry, the investigator and the procurator will allow defence counsel to be present from the moment they first question a minor. If neither the minor, his or her legal representative nor anyone else has engaged defence counsel, the official conducting the initial inquiry or the procurator must do so on their own initiative. Attendance by a lawyer at the interrogation of a minor suspect or accused is mandatory. The minor's legal representative may, with the investigator's consent, be present at the interrogation. At the investigator's or procurator's discretion, or upon defence counsel's request, a teacher or psychologist may be present when an accused minor is interrogated (Code of Criminal Procedure, arts. 644, 645, 647 and 648).

354. A warranted presumption that an accused is seeking to elude the initial inquiry or the court or that, given the gravity of the offence, he or she will hamper the establishment of the truth about the crime, affords grounds for the application of arrest as a preventive measure. Preventive measures are taken on the strength of a judge's order or a court decision. When selecting the measures to apply, account must be taken of the character of the accused, including his or her age. A minor may be placed in the custody of his or her parents, guardians or the administration of a closed institution for minors (if the minor is being brought up there), or, by order of a judge, housed in a special closed children's institution. The general rule is that arrest as a preventive measure will be used only on minors accused of offences punishable by law by over five years' deprivation of liberty (Code of Criminal Procedure, arts. 151, 152, 159, 649). Furthermore, an accused under arrest must be kept separate from convicted adults and minors (Code of Criminal Procedure, art. 652). As punishment, minors may be sentenced to not more than 10 years' deprivation of liberty, to be served in a reform institution. For especially grave crimes, minors aged between 16 and 18 may be sentenced to up to 15 years' deprivation of liberty (Criminal Code, art. 88).

355. On the composition of courts considering offences committed by minors, the Code of Criminal Procedure stipulates that trials in such instances must normally be conducted by judges who have undergone special training in education and psychology (art. 654).

356. When pronouncing sentence on a minor the judge must, alongside other circumstances, consider the possibility of a conditional discharge or a sentence not entailing deprivation of liberty (Code of Criminal Procedure, art. 658). Where the release of a minor from criminal liability or punishment is sought owing to a statutory limitation on prosecution, the limiting period is one half of that laid down for adults (Code of Criminal Procedure, art. 99).

357. The court may exonerate from criminal liability juvenile first offenders accused of minor offences if it considers that they can be rehabilitated by means of compulsory reform measures. Such measures include: a warning; release under supervision; a requirement to make good losses and damage; and committal to a special reform or rehabilitative institution. A minor may be subjected to several compulsory measures at once. In the event of consistent breaches of the terms of such measures they may, upon submission by a special-purpose State authority, be set aside and liability to face criminal proceedings reinstated (Code of Criminal Procedure, arts. 90 and 91).

*Right to review of sentence in a higher tribunal*

358. The Code of Criminal Procedure states that victims, civil plaintiffs and civil respondents have the right to demand consideration of a case by at least two judicial bodies, the court of first instance and a court of appeal or, where the law so provides, of cassation (art. 517).

359. Defence counsel and representatives can lodge an appeal only with the defendant's consent except where the latter is not an adult, is physically or mentally impaired, or has been sentenced to life imprisonment (art. 518, para. 4). Appeal proceedings are adversarial and grounded in the equality of the parties (ibid., para. 2).

360. Appeal may be lodged against sentences and other decisions by a court of first instance that have not yet become enforceable and are, in the appellant's opinion, unwarranted. "Unwarranted" is understood to mean that the factual circumstances of the matter are not in keeping with the law (art. 519). The lodging of an appeal necessarily entails consideration of the case by a court of appeal and the conduct of a fresh judicial investigation. Courts are not permitted to decline to consider a case. The lodging of an appeal stays execution of sentence (art. 520).

361. In accordance with the Code of Criminal Procedure, appeals against decisions by the district (municipal) and circuit courts are heard in the criminal division of the court of appeal or the corresponding divisions of the supreme courts in Abkhazia and Adjara; appeals against decisions by the Criminal Justice Division of the Supreme Court of Georgia are heard by the Criminal Chamber of the Supreme Court (art. 521, paras. 1 and 2).

362. Parties may lodge an appeal at the court of first instance within the 14 days following the pronouncement of sentence by that same court. The case file, appeal and objections thereto (if any are raised by the other party) must be forwarded from the court of first instance to the court of appeal within one month of sentence being handed down. The case must be considered by the court of appeal within 14 days of receipt (21 days if the file is complex or voluminous) (arts. 528 and 623, para. 1).

363. The Code of Criminal Procedure establishes the order of judicial proceedings in the appellate court, judicial fees and the procedure for determination of judgement (arts. 533-535); these are identical to the rules laid down in the Code for the court of first instance.

364. In its judgement, the appellate court can take one of the following decisions:

- To set aside the conviction by the court of first instance and substitute an acquittal;
- To set aside the acquittal by the court of first instance and substitute a conviction;
- To amend the judgement of the court of first instance;
- To dismiss the appeal and uphold, unaltered, the judgement of the court of first instance (art. 536).

365. The appellate court may not substitute a conviction for an acquittal or take any other decision unfavourable to the defendant if the appeal has been brought by the defendant, defence counsel or the defendant's legal representative and no objection has been entered by the prosecution. It may substitute a conviction for an acquittal or otherwise worsen the defendant's situation if a party for the prosecution specifically so requests in the appeal and has taken such a stance in the court of first instance. The defendant's situation may worsen if appeals are lodged by both prosecution and defence. A conviction may be substituted for an acquittal if the appellate court has conducted a full-blown judicial investigation (art. 540, paras. 1-3 and 5).

366. The decision of the appellate court is final and becomes enforceable when it is announced (art. 542, para. 1).

367. Under the Code of Criminal Procedure, judgements of a court of first instance or an appellate court that have not become enforceable and are, in the appellant's view, unlawful may be appealed in cassation proceedings. "Unlawful" is understood to mean that substantial breaches of proper legal procedure have passed unnoticed or been allowed to occur by the courts of first instance and appeal during their consideration and handling of the case; that the actions of the defendant have been incorrectly categorized; or that a penalty or type of punishment inappropriate to the defendant's actions and character has been imposed. If an appeal in cassation challenges not only the lawfulness of but also the grounds for a sentence, it will be considered in ordinary appeal proceedings (art. 547).

368. Appeals in cassation must be considered. The rules established by legislation for ordinary appeals apply (see article 520, cited above), but no fresh, full-blown judicial investigation is conducted (art. 548).

369. Appeals in cassation against judgements (decisions) of district (municipal) and circuit courts, courts of appeal and the Criminal Justice Division of the Supreme Court of Georgia are heard by the Criminal Chamber of the Supreme Court (art. 549, para. 1).

370. The deadlines and procedure for lodging an appeal in cassation and the deadline for consideration of the appeal by the court of cassation (arts. 550, 551 and 556) are the same as for ordinary appeals.

371. The order for the consideration of appeals and cases in the court of cassation is covered by article 560 of the Code of Criminal Procedure, and is based on the principles of equality of the parties and adversarial proceedings. In the oral arguments the defence always speaks after the prosecution.

372. On concluding its consideration of the case, the court of cassation may take one of the following decisions:

- To allow the judgement to stand and dismiss the appeal;
- To reverse the judgement and refer the case back for further investigation or fresh judicial consideration;
- To overrule the judgement and close the case;
- To alter the judgement in favour of the defence (art. 561, para. 2).

373. The court of cassation is not entitled to take a decision unfavourable to the defendant if the case is being considered on appeal from the defendant, defence counsel or the defendant's

legal representative in the absence of any objection thereto from a party acting for the prosecution. It may settle legal issues in a manner unfavourable to the defendant if all the following conditions are met:

- The procurator, a victim acting for the prosecution, or another party to the proceedings lodges an appeal demanding a change unfavourable to the defence in the judgement;

- The charge which the prosecution wishes to reinstate was laid during the pre-trial investigation and was supported by the appellant in the court of first instance;

- The court of cassation relies solely on the facts found by the court of first instance.

When altering a judgement in a manner unfavourable to the defence, the court of cassation is not entitled to impose a sentence of life imprisonment (art. 566, paras. 1, 3 and 5).

374. The court of cassation is not bound by the arguments put forward in an appeal but is required to go over the entire case; it must in so doing take account of defendants who have not lodged an appeal in cassation. It may reach a decision in the defendant's favour, but is not entitled to make the defendant's situation worse unless prosecution parties have so requested in their own appeals (art. 567, para. 1).

375. The judgement (ruling) of the court of cassation becomes enforceable as soon as it is pronounced; it is final and subject to judicial review only in the instances provided for in the Code of Criminal Procedure (art. 571, para. 1).

376. The Code also makes provision for judicial review of court decisions. Under article 575, a single appeal for judicial review may be lodged only against enforceable judgements (rulings) handed down in first instance by the Criminal Justice Division of the Supreme Court of Georgia and prior decisions of that court that have not been appealed in cassation proceedings. Appeals for judicial review are heard by the Supervisory Chamber of the Supreme Court (art. 576).

377. A judgement may be reversed or altered in judicial review on grounds warranting reversal or alteration in cassation proceedings:

- Significant breaches of the law governing criminal procedure;

- The incorrect application of the criminal or other substantive law;

- Imposition by the court of a penalty of a severity incommensurate with the defendant's actions and character (Code of Criminal Procedure, arts. 562 and 578).

378. On receiving an appeal, the Supervisory Chamber of the Supreme Court takes over the case file and the president of the Chamber instructs one Chamber judge to take a preliminary look at it. Having studied the case file and other material the judge, not more than a month following receipt of the appeal, reports to the assembled Chamber on the substance of the case and the grounds for the appeal. The case is heard in a closed session of the Chamber, at the close of which the Chamber will arrive at one of the following conclusions:

- To petition the Plenum of the Supreme Court for reconsideration of a judgement or other judicial decision that has become enforceable;

- That there are no grounds for reconsidering the judgement or other judicial decision against which appeal has been lodged (art. 581, paras. 1-3).

379. A conclusion by the Supervisory Chamber that there are no grounds for reconsidering a judgement or other judicial decision is final. Where cases are referred to the Plenum of the Supreme Court for consideration, the Code of Criminal Procedure clearly sets out the right of all parties to participate in the proceedings. Parties for the defence are the last to speak (arts. 581, para. 4; 584, para. 1, and 585, para. 6).

380. In reaching its decision, the Plenum is guided by the principle that the benefit of any doubt must go to the defendant. In the event of a tied vote, an appeal lodged by the prosecution is deemed to have been dismissed; one entered by the defence is deemed to be upheld (art. 585, paras. 10 and 11).

381. The court conducting a judicial review will adopt one of the following decisions:

- To allow the judgement or other judicial decision to stand and dismiss the appeal;

- To reverse the judgement and all subsequent judicial decisions and refer the case back for further investigation or fresh judicial consideration;

- To overrule the judgement and all subsequent judicial decisions and close the case;

- To overrule the finding or judgement handed down in appeal proceedings and allow the judgement of the court of first instance to stand;

- To alter the judgement or subsequent judicial decisions (art. 586, para. 1).

382. When cases are considered in judicial review, the nature of the decision reached vis-à-vis the appellant, accused and convicted person is governed in the manner laid down for cassation proceedings (see above, article 566 of the Code of Criminal Procedure). The reviewing court is not entitled to make the situation of either a convicted or an acquitted person worse if the judgement or other judicial decision is being challenged as unwarranted (art. 587, para. 2).

*Right to compensation if a conviction is overturned*

383. Pursuant to article 593 of the Code of Criminal Procedure, a judgement and subsequent judicial decisions can be overturned wholly or in part if new facts come to light or are disclosed. Factual circumstances occasioning a reconsideration of unlawful or unwarranted judicial decisions are:

- Perjury by a victim or witness, an incorrect expert finding, incorrect translation, or tampering with the records of the court underpinning an enforceable judgement;
- An error, discovered after a judgement has become enforceable, in the testimony of a victim or witness, an expert finding or a translation;
- The planting of physical evidence or documents serving to justify an enforceable judgement;
- Criminal actions by the judge, procurator, investigator or official leading the initial inquiry underpinning an enforceable judgement;
- Circumstances of which the court could not have been aware when passing judgement or other judicial decision;
- Circumstances suggesting the existence of a judicial error not discovered until after a judgement became enforceable.

Legal circumstances occasioning such a reconsideration are:

- A decision by the Constitutional Court ruling unconstitutional a law applied in handing down a judgement or other judicial decision;
- The adoption after a judgement (judicial decision) has become enforceable of a fresh law decriminalizing or diminishing the criminal liability for the offence concerned;
- Circumstances tending to show that the composition of the court handing down an enforceable judgement was not in accordance with the law, that evidence on which the judgement rests was inadmissible, or other significant breaches of the law occasioning the handing down of an unlawful or unwarranted judgement, if such circumstances can be established only by mounting an investigation.

384. Under the Code of Criminal Procedure, an individual convicted unlawfully or without grounds is subject to restitution of rights (rehabilitation) if his or her innocence is established. An acquittal is grounds for rehabilitation of a convicted person (art. 219, paras. 1 and 2). Individuals are entitled to partial rehabilitation if a higher court so alters the charges of which they were convicted, or so alters the punishment therefor, that the punishment they have actually undergone proves to be greater or more severe than that ultimately imposed, or if some of the charges are excluded from the judgement and as a result there are no grounds for a custodial sentence (art. 220).

385. All disbursements made for the purpose of rehabilitation and compensation for the injury caused by unlawful or unwarranted actions of the criminal justice authorities are payable irrespective of the guilt of any officials employed at those authorities. No disbursement will be made if the conviction of an innocent person was brought about by a deliberately false (self-incriminating) admission not obtained under duress (art. 222).

386. If grounds for rehabilitation come to light in court the court must, in an acquittal or ruling (decision) closing the case and giving rise to rehabilitation, acknowledge the right of the individual rehabilitated to compensation for all damages suffered. Compensation must be paid and rights restored within the six months following the acquittal or other official notice of rehabilitation. A rehabilitated person is entitled to apply to the court that decided to rehabilitate him or her for a determination of the damages he or she has suffered and, where necessary, a request that the financial and social welfare authorities should calculate corresponding estimates. If a case is closed by a court in cassation or judicial review proceedings, the size of the damages will be determined by the court that handed down the original judgement, but by a different bench of judges (art. 227, para. 4).

387. The Code of Criminal Procedure lays down the manner and conditions under which rehabilitated persons are to be compensated for material, physical and mental injury (arts. 223-225) and their other rights restored (art. 226). Further to this, it also provides for the possibility of petitioning for restitution of rights (art. 228).

*Prohibition of double jeopardy (ne bis in idem)*

388. The Georgian Constitution proclaims that no one may be tried twice for the same offence (art. 42, para. 4).

389. Under the Code of Criminal Procedure, no criminal proceedings may be brought, and existing proceedings must be terminated, if there exists an enforceable judgement relating to the same charge or a ruling (decision) by a judge or court to close a case relating to the same charge. If such a situation is discovered in the course of a trial, the court will close the case immediately upon the discovery (art. 28, paras. 1 (n) and 6).

**Article 15**

390. Under the Constitution, no one may be held liable for an act which, at the moment of its commission, was not considered an offence. A law that neither alleviates nor abrogates responsibility has no retroactive force (art. 42, para. 5).

391. The constitutional principle prohibiting the retroactive force of the law has been further developed both in Georgian criminal law and in Georgian civil law. Thus, under article 3 of the Criminal Code, a criminal statute establishing the criminality of a given act, increasing a prescribed punishment or in any other way worsening a person's situation cannot have retroactive force. If a new criminal statute mitigates a sentence, such sentence may be reduced for the person serving it, within the limits of the sanction provided by the statute in question. A criminal statute which decriminalizes an act, mitigates a punishment or in any other way

improves the situation of a person who has committed a crime does have retroactive force. If a criminal statute has been amended several times between the moment of commission of a crime and the handing down of the sentence, that version of the statute which is mildest is applied (paras. 1-3).

392. In accordance with article 3 of the Code of Criminal Procedure, the procedural statute to be applied during the conduct of criminal proceedings shall be that which was in force at the time of the initial inquiry, pre-trial investigation and the trial itself. Any changes made to a statute of criminal procedure may entail repealing or amending procedural decisions handed down earlier, if such action improves the situation of the suspected, charged, tried or convicted person.

393. Given that, under chapter IV (arts. 30-43) of the Code of Criminal Procedure, a civil action may also be brought in the course of criminal proceedings, note should also be taken of the provisions of the Civil Code in the context of our consideration of article 14 of the Covenant. Under article 6 of the Code, statutes and subordinate regulations shall not have retroactive force, except where expressly provided by law. A statute may not be vested with retroactive force if it impairs or is in any way detrimental to the situation of the person affected.

**Article 16**

394. In the Georgian legal system, the concepts of "passive legal capacity" and "active legal capacity" are employed instead of the term "recognition everywhere as a person before the law", used in article 16 of the Covenant. Under article 11 of the Civil Code, the passive legal capacity of the individual, in other words, the capacity to possess civil rights and duties, commences at birth. The right to inherit arises at the moment of conception; exercise of this right is contingent upon the actual birth. The passive legal capacity of an individual ends with the death of that individual. The moment of death is considered to be the moment when the brain ceases to function. An individual may not be deprived of passive legal capacity.

395. The concept of "active legal capacity" is defined by the Civil Code as the capacity of individuals of their own free will and through their own actions to acquire and to exercise to their full extent civil rights and duties (art. 12, para. 1). Full civil active legal capacity is acquired upon attaining the age of 18 or on marriage, whichever is sooner (art. 12, paras. 2 and 3). Minors between the ages of 7 and 18 are deemed to have limited active legal capacity (art. 14, para. 1). Persons who have been placed by the courts under guardianship are also considered to have limited active legal capacity (art. 14, para. 2). Minors aged 7 and under do not have active legal capacity (art. 12, para. 4). Persons may also be declared by the courts to lack active legal capacity for reason of infirmity of mind or mental illness. The rights of such persons are exercised by their legal representatives or guardians (art. 12, para. 5).

396. The Code of Civil Procedure also defines the concepts of "civil procedural passive legal capacity" and "civil procedural active legal capacity". Under article 80 of the Code, all individuals have the capacity to possess civil procedural rights and duties (procedural passive legal capacity), which commences at birth and continues until death. Under article 81 of the Code, procedural active legal capacity consists in the capacity of individuals, through their own acts, to exercise procedural rights in the courts and to perform procedural duties, as well as to

instruct representatives to conduct proceedings on their behalf. The Code of Civil Procedure stipulates that individuals acquire full procedural active legal capacity at the age of 18 (majority). Persons who have entered into marriage before reaching the age of 18 are also deemed to have active legal capacity (art. 81, para. 2). The rights and legally protected interests of minors aged between 7 and 18 and of citizens declared to be of limited active legal capacity are defended in the courts by their parents (adoptive parents) or guardians (art. 81, para. 3). The rights and legally protected interests of minors and citizens declared to lack active legal capacity are defended in the courts by their legal representatives - parents (adoptive parents) or custodians (art. 81, para. 5).

397. Under civil law, there are no conditions in which the passive legal capacity of persons may be restricted, not even under a state of emergency. The right to recognition of passive legal capacity is entirely unconnected with the place of residence of the person in question.

**Article 17**

398. As already noted in the initial report on implementation of the Covenant, the rights provided under article 17 are fully guaranteed by the Constitution. As the constitutional principles in question were not fully described in the initial report, we provide below the full text of the corresponding article of the Constitution.

> "1. The privacy of every person, his or her workplace, personal records, correspondence, conversations by telephone or by other technical means, and also information received by technical means are inviolable. Restriction of the said rights is only permitted by a decision of the courts or, in the absence of such decision, when an urgent necessity has arisen as defined by law.
>
> "2. No one shall be entitled to enter a person's home or other possessions against the will of their owner, or to carry out searches without a court decision or in the absence of any urgent necessity therefor as provided by law."

399. In addition, in consideration of article 17, paragraph 1, of the Covenant, reference should be made to article 17 of the Constitution, which proclaims the inviolability of the honour and dignity of the person.

*Respect for the right of privacy in criminal procedural and criminal legislation*

400. Georgian law stipulates that every person should be protected from arbitrary or unlawful intrusion into his or her privacy or family, irrespective of the source of such intrusion - whether by State authorities, individuals or legal entities. In effect, the right proclaimed in article 17 of the Covenant requires a maximum degree of protection from arbitrary actions by State bodies, in particular, in ensuring due process in criminal cases.

401. The section of the Code of Criminal Procedure dealing with general principles contains special provisions guaranteeing the inviolability of privacy. Under article 13 of the Code, no one has the right wilfully and unlawfully to invade the privacy of others. The law guarantees the inviolability of the home or other possessions, correspondence, items sent by post, personal

records, telegraphic communications, telephone conversations, and information of a personal nature transmitted or received by other means (para. 1). Article 12 enshrines the right of every person to the protection of his or her honour and dignity (para. 1).

402. The wording of article 13, paragraph 1, of the Code of Criminal Procedure, as referred to above, is general in its scope. Specific aspects of the exercise of the right to inviolability of privacy in the framework of criminal proceedings are fleshed out in subsequent paragraphs of that article.

403. The Code unequivocally establishes that the searching, seizure, or inspection of homes or other possessions, the interception of correspondence and other items sent by post and their inspection and seizure, the tapping of telephone conversations and the gathering of information from technical communication channels may only be carried out on the order of a judge or the ruling (decision) of a court. If there is an urgent need, as established by law, procedural actions may be conducted without a judicial order, but the legality and validity of such actions must be verified by a judge within 24 hours of their conduct. In this process, the judge shall rule on the admissibility of any evidence thus obtained.

404. During the conduct of procedural actions it is prohibited to divulge information about the private lives of citizens or any other information of a private nature which the person in question considers it necessary to keep secret. Persons who have sustained damage through the unlawful disclosure of information about their private lives shall be entitled to full compensation therefor. In open court the content of private correspondence and private telephone communications may only be disclosed with the consent of the person to whom they relate. In the absence of such consent, such material may only be disclosed in a court sitting in camera.

405. Article 290 of the Code of Criminal Procedure (on investigative actions carried out on the order of a judge) extends the provisions of article 13 of the Code by establishing that investigative actions involving restrictions on the inviolability of privacy may only be permitted on the order of a judge. The article stipulates those cases of urgent necessity where investigative actions may be carried out without a judicial decision. These include the genuine danger that traces and material evidence may be lost and apprehending a culprit at the scene of the crime. In all cases the judge must be kept informed about the conduct of investigative actions and he or she has the power to rule on the lawfulness or unlawfulness of any given action.

406. Specific chapters of the Code of Criminal Procedure, on seizure and search (arts. 315-332) and on inspection (arts. 333-339), contain detailed regulations governing the conduct of procedural actions falling within the scope of article 17 of the Covenant. It would be useful in this context to cite the main provisions of the above articles of the Code.

407. Officials conducting initial inquiries, detectives and procurators are entitled, on the basis of a judge's order or the ruling of a court ordering a seizure or search, to enter persons' homes (or other possessions) for the purpose of locating and removing articles or documents of significance for criminal proceedings. In the event of their encountering resistance, entry into such homes (or other possessions) may be effected by force. Before carrying out seizures or searches, officials conducting initial inquiries, detectives or procurators shall be obliged to show the judge's order (ruling of the court) to the person in respect of whom the investigative action in

question is being conducted and, in the absence of such person, to a family member of majority age, the householder or a representative of the local authorities. Officials conducting the seizure or search are obliged to take steps to prevent the disclosure of the circumstances of the investigative action in question, and also of any details of the person's private life revealed in the process. Such seizures or searches must be conducted in the presence of at least two witnesses (art. 321, para. 1, and art. 323, paras. 1-3).

408. When articles or documents are being seized, the officials conducting such seizure invite the persons concerned to surrender the articles or documents voluntarily. Should they refuse, the seizure is effected by force. The request to surrender the items voluntarily is made by the official conducting the initial inquiry, the detective or the procurator before embarking upon the search. In the event of refusal to hand over some or all of the articles or documents subject to confiscation, a search must be conducted. In such searches, those articles or documents which have been identified in the court order (ruling) and also any articles or documents which are of evidential importance in the case under consideration, or which clearly point to the commission of another crime and any other objects the possession of which is prohibited by law shall be confiscated. All confiscated articles and documents are shown to the witnesses and to other persons present at the seizure or search and are recorded in the incident report (art. 323, paras. 5-8).

409. If in the course of a seizure or search no articles or documents are discovered which are of significance for the case, an apology must be made to the persons who have been subjected to these investigative actions. The official conducting the seizure or search is obliged to ensure that the premises in question are set back in order and that due compensation is made for any damage caused to citizens as a result of the seizure or search. If in the course of the above investigative actions any legally prescribed procedure is contravened, the articles or documents which have been confiscated shall not be valid as evidence or shall forfeit such validity and may not be used in substantiation of charges (art. 324).

410. Body searches or the seizure of personal effects are conducted in accordance with the procedure set forth above, with certain specifications as described below. Thus, a body search or the seizure of personal effects may be carried out in the following cases even without a judge's order (ruling of the court):

- Where, in the course of detaining a suspect, there are sufficient grounds to believe that he or she is carrying arms or is attempting to destroy evidence likely to inculpate him or her in the commission of a crime;

- When drawing up an arrest report after the suspect in question has been handed over to the police or other body conducting an initial inquiry;

- Where, in placing a charged person in custody, there are sufficient grounds to believe that he or she is carrying arms, other articles the possession of which is prohibited by law or articles or documents which are of evidential importance in the case in question;

- Where there are sufficient grounds to believe that a person present at the place where a seizure or search is being conducted is concealing articles or documents subject to confiscation.

Body searches and the seizure of personal effects and documents which involve the undressing of the person being searched must be conducted by officials of the same sex as the person concerned in the presence of witnesses of the same sex (art. 326).

411. The final provision of article 326 appears highly questionable from the standpoint of article 17 of the Covenant. Body searches should in any event be conducted in the presence of persons of the same sex as the person being searched and this requirement should not be contingent on the extent to which that person is required to undress.

412. The Code of Criminal Procedure also contains provisions governing the following:

- Conduct of seizures and searches on the premises of diplomatic missions and body searches and seizures of personal effects of diplomatic representatives (art. 328);

- Interception, inspection and seizure of postal and telegraphic communications of significance for the criminal proceedings (arts. 329-331);

- Procedure for the payment of compensation for damage caused through the unlawful or unwarranted interception of postal and telegraphic communications (art. 332).

413. The same procedural rules as those described above also apply to the conduct of such investigative actions as inspections.

414. With reference to article 17, we should note that the Criminal Code categorizes as a punishable offence the broaching of individual or family privacy, including by persons under a duty of professional secrecy (art. 157); the unlawful recording or tapping of private conversations with the use of technical means and the unlawful use or dissemination of information obtained thereby, including through the misuse of official position (art. 158); breaching the confidentiality of private correspondence, telephone conversations or other forms of communication, including through the misuse of official position (art. 159); illegally entering homes or other possessions against the will of their owners, conducting unlawful searches or any other actions violating the privacy of the home or possession, including through the use or threat of the use of force, through the misuse of official position or with the use of firearms (art. 160).

*Complaints about investigative actions entailing the invasion of privacy*

415. As noted above, investigative actions entailing invasions of privacy may only be carried out on a decision of the court. If the said actions are conducted (in emergencies) without the order of a judge, the judge is entitled in any event to decide on the lawfulness or unlawfulness of the investigative action. In accordance with article 290, paragraph 6, of the Code of Criminal Procedure, such a decision by a judge is not subject to appeal.

416. The Code also stipulates that persons who discover that postal or telegraphic communications sent by them or addressed to them have been intercepted or seized are entitled to lodge complaints regarding the unlawful or unwarranted nature of such actions to the court of cassation, where such complaints are considered by a judge sitting alone with the complainant or the complainant's representative. Should the complaint be upheld, the judge issuing the order must submit a written apology to the complainant. The complainant is also entitled to sue for material compensation for any moral damage caused and to insist that the culprits be brought to justice (art. 332, para. 1).

*Concepts of "family" and "home" in Georgian law*

417. Article 17 of the Covenant prohibits arbitrary interference with a person's "privacy" and "home". In this context, we need to clarify what is covered by the concepts of "family" and "home" in Georgian law.

418. Neither the Marriage and Family Code nor the section on family law of the Civil Code contain definitions of the concept of "family". Both codes govern issues of marriage, the rights and duties of spouses, the relations between parents and children and so forth. At the same time, an analysis of the relevant articles of the Civil Code shows that marriage, officially registered with the civil registration authorities, is seen as a precondition for the creation of a family. The law recognizes the existence of both the nuclear family (parents and children) and the extended family. In accordance with the chapter of the Civil Code dealing with the maintenance obligations of other members of the family (besides parents and children), the extended family may include brothers and sisters, grandparents, step-parents, and stepchildren (arts. 1223-1227). Under Georgian law, family relations obtain between adoptive parents and adopted children (art. 1239) and, effectively, between guardians or custodians and their wards (arts. 1289-1291).

419. Under the Civil Code, the place of residence ("home") of an individual is deemed to be the place where that individual normally chooses to reside. A person may have several places of residence. The place of residence of a minor is deemed to be the place of residence of that minor's parents in possession of their parental rights and, of a ward, the place of residence of the ward's guardian (art. 20, paras. 1 and 2).

*Protection against unlawful attacks on a person's honour and reputation*

420. The Civil Code contains an article (art. 18) on private non-property rights, which is directly relevant not only to article 17, but also to article 19, paragraphs 2 and 3, of the Covenant. Article 18 of the Code stipulates that a person is entitled to demand, through the courts, the retraction of information affronting his or her honour or reputation, violating the confidentiality of his private life, encroaching upon the inviolability of his person or injurious to his business reputation, unless the person responsible for disseminating such information is able to prove that it is consistent with the truth. The same procedure obtains in respect of the incomplete publication of factual information if such publication is prejudicial to the honour, dignity or business reputation of an individual (para. 2).

421. If information affronting the honour, dignity or business reputation or invading the privacy of an individual is disseminated over the mass media, that information must be retracted

by the same means. If information of this kind is contained in a document issued by an organization, that document must be replaced and the person concerned notified accordingly (art. 18, para. 3).

422. The protection afforded under this article is provided irrespective of the guilt of the person causing the violation. If, however, the violation results from an action carrying indicia of guilt, the injured party may also claim damages, including moral damages (art. 18, para. 6).

*Protection of personal information*

423. The collection and storage of personal information in the public establishments of Georgia are regulated by the General Administrative Code, which devotes a special chapter on freedom of information (arts. 28-50) to this topic. We describe below the principles of the Code which are directly relevant to article 17 of the Covenant. Later in this report, when considering article 19 of the Covenant, we shall explain how this legislative instrument regulates the issue of access to public information.

424. The General Administrative Code stipulates that everyone is entitled to know:

- The purposes for the collection, processing, storage and dissemination of information by public establishments, as well as the areas where it will be used and the legal justification for such use;

- Whether or not his or her personal data are included in a public database, and the procedure for consulting such data, including the procedure for the identification of any persons, who, either directly or acting through representatives, have applied to consult or to make changes to his or her personal data;

- The categories of persons who are legally entitled to consult the personal data held in public databases;

- The content and sources of data held in public databases and the categories of persons in respect of whom information is being collected, processed and stored (art. 42, paras. (i) and (l)).

425. Public establishments are obliged:

- To collect, process and store only such data which they are entitled to gather by law and which are necessary for the performance of their functions;

- On the request of individuals or pursuant to a court order, to destroy any data that do not serve the purposes established by law or which are imprecise, unreliable, incomplete or irrelevant and to replace such data with accurate, reliable, relevant and complete data;

- To notify, without delay, the person concerned of requests by third parties or by public establishments for access to that person's data; except in cases where such notification would manifestly and inevitably cause substantial harm to the interests of national security or the conduct of criminal prosecutions;

- When collecting, processing and storing personal data, to notify the persons concerned about the purposes and legal justification for the processing of personal data, informing them whether the submission by them of personal data is mandatory or voluntary, notifying them of the sources and content of such data and indicating the third parties to whom these data might be imparted (art. 43, paras. (a), (c), (g) and (i)).

426. Personal data, except for the personal data of officials, shall be accessible to no one without the consent of the person to whom the data relate or, in cases involving the interests of national security or a criminal prosecution, without the reasoned decision of a court. At the same time, the court is only entitled to rule on the disclosure of personal data where the truth in a given case cannot be established by means of other evidence and where all possibilities for obtaining such information from other sources have been exhausted (art. 44).

427. Individuals are entitled to request both the correction of personal details and the destruction of unlawfully obtained data. In this the burden of proof that the personal information was gathered lawfully rests on the public institution (art. 46).

428. Individuals are entitled to seek compensation, through the courts, for material and non-material damage caused by a public institution through the unlawful collection, processing, storage and dissemination of personal data, or the unlawful transmission of such data to other persons or public institutions. In this the burden of proof rests on the public institution or the responsible public official (art. 47).

429. In accordance with the General Administrative Code, the term "public institution" is understood to mean: a State authority or a local authority, and also an individual exercising legally defined powers on behalf of a public institution; a legal entity under public law or a legal entity under private law funded by the State. The term "personal data" is understood to refer to public information by use of which a given person may be identified (art. 27).

**Article 18**

*Freedom of conscience in the Constitution and legislation of Georgia*

430. The Georgian Constitution recognizes the special role of the Georgian Orthodox Church in the country's history and, at the same time, proclaims the complete freedom of religion and belief and the separation of Church and State (art. 9). In article 19, the Constitution states that every person is guaranteed freedom of opinion, conscience and creed and that no one may persecuted in connection with the exercise of his or her freedom of opinion, conscience and creed nor coerced into expressing his or her opinion regarding these freedoms. The article further states that any restriction on these freedoms is prohibited provided their exercise does not encroach on the rights and freedoms of others.

431. The Constitution does not provide any restrictions on the freedom to profess a religion or the freedom of conviction under a state of emergency or martial law.

432. The Criminal Code contains provisions guaranteeing protection of the rights referred to above. Article 155 stipulates penalties in the form of fines, attachment of earnings or deprivation of liberty for terms of up to five years for unlawfully disturbing religious services or the performance of any other religious rites by violence or the threat thereof, or for insulting the religious feelings of believers or ministers of religion. Article 156 sets out penalties in the form of fines, attachment of earnings or deprivation of liberty for terms of up to three years for persecution on the grounds of conscience, religion, belief or religious activity.

433. In general, Georgian law is entirely neutral with regard to issues of religion, belief or creed and bars any form of discrimination on any grounds, including those of religion.

434. Under the Civil Code, parents are both entitled and obliged to raise their children, to take of their physical, moral, spiritual and social development, and to bring them up as worthy members of society, giving priority attention to the interests of the children themselves (art. 1198). In our view, this principle of law is directly relevant to the State's implementation of its obligations under article 18, paragraph 4, of the Covenant. In addition, we note that the Education Act accords parents (or legal representatives) the right to choose the form of education for their own minor child as well as the educational establishment (art. 44, para. 1). It should be borne in mind that this law covers only the realm of secular education and does not touch on the issue of religious education.

435. With reference to article 18, paragraphs 1 and 3, attention should be drawn to certain provisions of the Detention Act regulating the work of the country's penitentiary system. Under article 26 of the Act, any person serving a sentence taking the form of deprivation of liberty is entitled to engage in religious activities, and to use the appropriate paraphernalia and literature. The administration of the correctional facility is obliged to create the necessary conditions to meet the religious needs of its convicts. Depending on the technical capabilities of the establishment in question, its staff may include a clergyman, duly authorized by the church (art. 94). According to information from the Ministry of Justice's Corrections Department, most Georgian correctional facilities currently have small churches or special rooms set aside for the performance of religious ceremonies and prayers.

*Practical aspects of the exercise of the right to the freedom of conscience*

436. Information regarding the different religions practised in Georgia can be found in the core document, in the section entitled "Religion".

437. Throughout its long history, Georgia has been renowned for its religious tolerance. The country has never known such phenomena as anti-Semitism, religious strife or religious hatred. The old town in Tbilisi, where a Georgian church, an Armenian church, a synagogue, a mosque, a Russian church and a Catholic church stand in close proximity, is an example of Georgian religious tolerance in practice. All told, there are 15 synagogues, 14 mosques, 11 Armenian-Georgian churches, 8 Russian churches, 4 Armenian churches (one a cathedral) and 1 Catholic church operating in the country. The

situation of the Jews in Georgia deserves special mention. The so-called Georgian Jews are fully integrated into Georgian society. The doors of the country's synagogues have always been kept open for believers, even in the darkest periods for Jews in Soviet times. Judaism is one of the faiths expressly recognized by the State.

438. It is widely acknowledged that Christianity has made an immense contribution to the preservation and development of Georgian statehood and has always played a special role in the life of the country. Such traditional religions as Islam, Judaism, Catholicism and Gregorianism all form part of the country's historical and social heritage. More recently, since independence, non-traditional religious organizations have also started to operate in Georgia. Their emergence has been greeted by the general public and the clergy with considerable misgivings. Thus, one political leader filed suit with the courts to have the Jehovah's Witnesses' publishing license revoked. Previously the same individual had sought to prevent the entry into Georgia of a batch of Jehovah's Witnesses literature. The case was considered at first instance and in appeal, and the matter is currently being considered in cassational proceedings by the country's Supreme Court. In October 1999 a group of radical Christians led by a defrocked priest broke up a gathering of Jehovah's Witnesses and physically injured the participants. Criminal proceedings were instituted and an inquiry is in progress. The President himself deemed it necessary to comment on this case, issuing an unequivocal condemnation. Many non-governmental organizations have adopted resolutions protesting against similar unacceptable and barbaric acts.

*Status of religious organizations*

439. According to the Civil Code, a religious association is a legal entity under public law, in other words, a non-State organization created under the law for the prosecution of public goals. Accordingly, religious associations are not included among non-governmental organizations (the so-called "third sector"), which are categorized as legal entities under private law. The Civil Code assigns religious associations the same status as political parties (art. 1509). At the same time, in contrast to political associations of citizens, the procedure for the creation and operation of religious associations is not regulated by law.

440. Given the highly variegated religious canvas of Georgian life, there is clearly a need now to establish a legal framework for the operation of religious organizations. This might take the form of the adoption of an act on freedom of conscience or on religious associations. The idea is the subject of fairly intense public debate, but views on it remain very divided.

**Article 19**

*Constitutional guarantees of the right to freedom of opinion and information*

441. Under article 24 of the Constitution, everyone has the right freely to receive and to distribute information, and to express and disseminate his or her opinions orally, in writing or in any other form. Neither the State nor any individual is entitled to monopolize the media or other means of distributing information. Censorship is prohibited. The provisions on freedom of opinion and information may be restricted by law under conditions necessary in a democratic society for the maintenance of national and public security or territorial integrity, the

suppression of crime, the protection of the rights and dignity of other persons, the prevention of the release of classified information or for the upholding of the independence and impartiality of the justice system.

442. Article 19 of the Constitution proclaims the freedom of belief and prohibits any restriction of this freedom provided its exercise does not encroach upon the rights and freedoms of others. It also prohibits the persecution of persons in connection with their exercise of this freedom.

443. The Constitution guarantees the freedom of intellectual creativity; the right of intellectual property is declared inviolate. No censorship is permitted in the sphere of creative activity. Creative works may not be seized nor may their dissemination be prohibited, provided they do not infringe upon the rights of others (art. 23, paras. 1-3).

444. Article 41 of the Constitution grants every citizen of Georgia the right under law to have access to his or her personal information contained in State institutions and official records, except those containing State, professional or commercial secrets. At the same time, no one may have access to official records pertaining to a person's health, finances or other private matters, without the consent of that person, except as otherwise specified by law, in order to protect national or public security and health or to uphold other rights and freedoms of third parties.

445. The Constitution (art. 37, para. 5) recognizes the right of individuals to receive full, objective and timely information on the state of the environment in which they live and on their working conditions.

*Press freedom*

446. The media represent the primary means both for the expression of opinion and for the receipt and dissemination of information. As noted in the initial report, the activities of the media are regulated by the Press and Media Act. Since the submission of that report the Act has been extensively amended and supplemented, as described in further detail below.

447. Establishing the constitutional principle of press freedom, the Act grants Georgian citizens the right to express, disseminate and defend their opinion through any information medium, and also to obtain information on matters of State and public life (art. 1, paras. 1 and 2). In Georgia, public information may be disseminated in any language (art. 3) and citizens of Georgia have the right to receive information from foreign sources (art. 30, para. 3).

448. The Act states that the right to establish media outlets vests in State authorities, political parties and legally registered voluntary organizations and Georgian citizens over the age of 18 (art. 6, para. 1). Media outlets must be registered in the legally prescribed manner before they can operate (art. 7, para. 1). The activities of a media outlet may be legally suspended or terminated in the event of a repeated violation of the law which facilitates crime and endangers national security, territorial integrity or public safety (art. 12, para. 1).

449. A similar procedure applies under the Act to the establishment and activities of publishing houses and television and radio broadcasting companies (art. 2, para. 2).

450. The Press Act establishes the right of citizens to have efficient access through the media to information about the activities of State authorities, voluntary and political associations and officials (art. 19, para. 1), and to require editors, through the media, to retract material offensive to individuals (art. 20, para. 1).

451. The Press Act establishes the right of journalists to seek, receive and disseminate information (art. 21, para. 2). Journalists are obliged to respect the wish of persons providing information not to disclose their authorship or, on the contrary, to indicate their authorship, if such information is being published for the first time (art. 24).

452. Article 19 of the Covenant does not preclude the State from introducing a legal licensing system for broadcasting enterprises. Under article 29 of the Civil Code, the creation of commercial legal entities of this category is governed by the Business Practices Act. Until recently, the issuing of licences in the communications area was the responsibility of the relevant ministry. Under the Communications and Postal Services Act, adopted in July 1999, issuing licences and regulating the activities of the holders of such licences (i.e., non-State radio and television companies) is the responsibility of the National Communications and Postal Services Regulatory Commission (art. 20).

453. The Act clearly defines the conditions under which the licensed activity may be performed, and under which licences may be suspended and cancelled. One of the grounds for the suspension of a licence is an activity which violates the rights, freedoms and lawful interests of people, or endangers their life and health (art. 39, para. 2). A licence may be suspended until the violation has been removed, but for no longer than three months. If on the expiry of three months the violation has not been removed, the licence may be cancelled (art. 40, para. 1). This and other decisions by the National Communications and Postal Services Regulatory Commission may be challenged in the courts by the licence-holder (art. 41, para. 1).

454. Statistics on the publication of books, periodicals and newspapers in Georgia are provided in the table below. In addition, foreign publications mostly in Russian are freely available throughout the country.

| | 1990 | 1995 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|
| Total print-run of books and booklets (millions of copies) | 20.1 | 0.8 | 0.8 | 0.8 | 0.6 |
| Annual print-run of journals and other periodicals (millions of copies) | 27.3 | 0.4 | 0.2 | 0.2 | 0.2 |
| Number of newspapers | 171 | 127 | 123 | 161 | 243 |
| Single-edition print-run of newspapers (millions of copies) | 4.9 | 0.3 | 0.2 | 0.3 | 0.4 |
| Annual print-run of newspapers (millions of copies) | 716.3 | 6.6 | 13.3 | 12.3 | 15.9 |

455. In addition to the State television and radio corporation, there are dozens of private television and radio stations in Georgia which broadcast nationwide or regionally. Many of them are extremely popular and enjoy far higher ratings than State-run television and radio.

456. The State television and radio corporation has a Russian television channel and Russian, Armenian and Azerbaijani radio services. The State provides financial support for newspapers published in Russian, Armenian and Azerbaijani. In addition, the respective ethnic associations publish Greek, Jewish and Kurdish newspapers. In all, there are seven newspapers and three periodicals published in Russian; four newspapers in Armenian, of which three are regional and one Georgian-Armenian; three newspapers in Azerbaijani, of which two are regional Georgian-Azerbaijani; three newspapers in Greek; and one newspaper in Kurdish. Of the three Jewish newspapers, one is published in Georgian and the other two in Russian. There are two independent newspapers in English.

*Access to public information*

457. The Georgian General Administrative Code contains a chapter on freedom of information, outlining the procedures that must be followed by administrative bodies when releasing non-classified information to parties with an interest in obtaining it. Under the Code, everyone is entitled to have access to non-classified information held by an administrative body and to obtain a copy thereof, provided that such information does not contain State, professional, commercial or personal secrets. Non-classified information shall be available for public inspection, provided that the fact of releasing it does not manifestly and obviously compromise national security or a criminal investigation. Publicly available information may be classified only if explicitly required by law, and even then for no longer than five years. No one shall be denied access to non-classified information which might help establish that person's identity and which, under the Code, cannot be made accessible to other persons. An individual has the right to know what personal details about him or her are held by a public institution. Personal details, except the personal details of officials, may not be released to others without the consent of the person concerned. A person may sue for material or immaterial damages if, for example, his or her personal details have been unlawfully obtained, processed, stored or disseminated, or communicated to another person or to a public institution (arts. 10, 28, 30, 31, 39, 46 and 47).

458. The Code does not apply to the work of the authorities in connection with criminal prosecutions and investigative measures, the enforcement of judicial decisions, military questions, foreign policy or international treaty-making (art. 3, para. 4).

459. The General Administrative Code does not specify what is meant in article 10 by the terms "professional", "commercial" or "personal" secrets. Draft amendments to the Code are currently being prepared with a view to refining the language here and elsewhere.

*Right to the freedom of opinion and information as reflected in other legislative instruments*

460. The State Secrecy Act prohibits the classification as State secrets of information which could; lead to the violation or restriction of fundamental human rights and freedoms or compromise the health and security of the population. Regulatory acts and international treaties and agreements may not be classified as State secrets (art. 8), nor may information relating to natural disasters, the state of the environment, the social and economic situation of the population, the crime situation, corruption among officials and so forth. The Act sets clear criteria for the granting or withholding of access to State secrets. It should be noted that the Act prohibits the preliminary monitoring of the publication of State secrets in the press and other media (art. 35).

461. Article 8 of the Culture Act states that everyone has the right to engage in creative activities of any kind in accordance with his or her interests and abilities. The Act prohibits any interference in and censorship of creative processes and any measures to obstruct the dissemination of creative works, except where such dissemination serves to infringe the rights of others, to foment national, ethnic, religious and racial strife, to propagate war and violence and to promote pornography (art. 9). The Act recognizes the right of every person to have access to culture (art. 11), and the obligation of the State to facilitate the participation of individuals and cultural organizations in the international cultural dialogue (art. 34).

At the same time, the preparation or sale of pornographic works or artefacts, and also the preparation or dissemination of works propagating the cult of violence or cruelty are classified as criminal offences (Criminal Code, arts. 255 and 356). The principle of safeguarding morality and public order, applied in these cases, is consistent with the requirements of article 19, paragraph 3, of the Covenant.

462. In accordance with article 4 of the State of Emergency Act and article 4 of the Martial Law Act, under a state of emergency or martial law the country's supreme executive authorities may, with due compliance with the requirements of the law, introduce a media monitoring system. The forms of such monitoring are not specified by the acts in question.

463. The Advertising Act prohibits the placing and dissemination of inappropriate advertisements. "Inappropriate" advertisements are those which are unscrupulous, unreliable, unethical or patently misleading. Advertisements must not incite people to violence, aggression or disorder or urge them to perform dangerous actions that might compromise the health or safety of others (arts. 3 and 4).

The Act prescribes a number of restrictions on the advertising of alcoholic beverages, tobacco products, medical products and services, and securities (arts. 8, 9 and 11). The advertising of weapons is prohibited (art. 10).